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THE

MUNICIPAL MANUAL:

CONTAINING THE

MUNICIPAL, ASSESSMENT, LIQUOR LICENSE, AND OTHER ACTS RELATING TO MUNICIPAL CORPORATIONS.

TOGETHER WITH

THE AMENDING ACTS OF

1888 AND 1889

WITH NOTES OF CASES BEARING THEREON,

BY

THE HONOURABLE

ROBERT ALEXANDER HARRISON, D.C.L.,

LATE CHIEF JUSTICE OF ONTARIO.

Fifth Edition,

BY

F. J. JOSEPH, Esq.,

OF OSGOODE HALL, BARRISTER-AT-LAW.

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TO

THE HONOURABLE

OLIVER MOWAT, Q.C.,

ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO.

IN RECOGNITION OF MUCH PERSONAL KINDNESS
AND AS A TRIBUTE OF RESPECT TO
HIS HIGH LEGAL ATTAINMENTS

THE

FIFTH EDITION

OF

This Work

IS WITH HIS PERMISSION

INSCRIBED.

PREFACE.

The changes which have been introduced into the Municipal Acts, and the numerous judicial decisions which have been given upon their various provisions during the last ten years, render it necessary to issue a new edition of "HARRISON'S MUNICIPAL MANUAL."

I have endeavoured to preserve the character of the work as it was originally written, and as it came to me from the late eminent Chief Justice. A few notes which were but paraphrases of sections, and the citations of some American cases, the reports of which are difficult of access, are eliminated. These changes I have not made without much hesitation. The first omission was to make room for the necessary additional notes, and at the same time to keep the volume within reasonable limits. In substitution for the American decisions I have, with his permission, referred to those portions of Mr. Justice Dillon's valuable work on Municipal Corporations, where the cases are quoted under appropriate heads, and commented upon by that able jurist with all the completeness that can be desired.

I have to express the obligations I am under to John R. Cartwright, Esq., for his valuable suggestions and assistance in the preparation of this edition of THE MANUAL. I have also to

thank A. H. Marsh, Esq., for notes on *Quo Warranto* proceedings, and J. H. Macdonald, Esq., Q. C., for his suggestions with respect to the forms of Local Improvement By-laws. The Calendar, Table of Cases, and Index, are the work of A. M. Dymond, Esq., who has bestowed much labour upon them, and has made them as complete and exhaustive as space would permit.

F. J. J.

Osgoode Hall,

April, 1889.

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CALENDAR.

JANUARY.

DAY.

1—Separation of Junior Township from Union takes effect on. (*The Municipal Act*, sec. 28), p. 31.

Yearly taxes to be computed from. (*The Municipal Act*, sec. 364), p. 275.

Year, for purposes of assessment, to commence in districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River. (*Act respecting Algoma, etc.*, sec. 29), p. 641.

Last day on which Snipe, Rail, and Golden Plover may be killed. (*Act for the Protection of Game, etc.*, sec. 1 (5)), p. 1125.

Last day on which Grouse, Pheasants, Prairie Fowl, or Partridge may be killed. (*Act for the Protection of Game, etc.*, sec. 1 (2)), p. 1124.

Last day on which Woodcock may be killed. (*Act for the Protection of Game, etc.*, sec. 1 (4)), p. 1124.

Last day on which Duck and waterfowl may be killed. (*Act for the Protection of Game, etc.*, sec. 1 (7)), p. 1125.

10—Last day for return to be transmitted to Provincial Secretary by Clerk of the Municipality, or of any corporate body issuing debentures. (*Debentures Registration Act*, sec. 5), p. 648.

15—Last day for Treasurers of Municipalities, indebted under the Municipal Loan Fund Acts, to make return to the Provincial Treasurer of the amount of taxable property, debts and liabilities. (*The Municipal Act*, sec. 381), p. 287.

31—Last day for all Councils to make returns to Lieutenant-Governor, through Provincial Secretary, of account of the debts of their respective Corporations. (*The Municipal Act*, sec. 382), p. 288.

Members of Councils, except County Councils, to be elected on first Monday in January. (*The Municipal Act*, sec. 88), p. 77.

First election for Councils, where Corporations are newly erected or extended, to be held on first Monday in January. (*The Municipal Act*, sec. 89), p. 78.

Election of Trustees held in Police Villages on first Monday in January, if not returned by acclamation. (*The Municipal Act*, sec. 651), page 613.

Members of Councils of Municipalities in Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River (except those returned by acclamation) to be elected on first Monday in January. (*Act respecting Algoma, etc.*, sec. 46), p. 644.

Members of Municipal Councils, other than County Councils, hold their first meeting at eleven o'clock a.m., on the third Monday in January, or on some day thereafter. (*The Municipal Act*, sec. 223), p. 169.

Trustees of Police Villages to hold their first meeting at noon, on the third Monday in January. (*The Municipal Act*, sec. 662), p. 616.

By-law passed by Council withdrawing from Union Health District to take effect on third Monday in January. (*Public Health Act*, sec. 41), p. 1040.

Members of County Council to hold their first meeting on the fourth Tuesday in January, at two o'clock in the afternoon, or on some day thereafter. (*The Municipal Act*, sec. 223), p. 169.

Majority of Road Commissioners may call meeting for the election of their successors during the month of January. (*The Assessment Act*, sec. 117), p. 801.

County Treasurer to prepare and submit to the Council, at its first sitting in January of each year, a report on the non-resident land fund. (*The Assessment Act*, sec. 220), p. 869.

FEBRUARY.

DAY.

1—Members of Free Library Board to hold office for three years from this date. (*Free Libraries Act*, sec. 3 (6)), p. 662.

Members of Boards of Park Management to hold office for three years from this date. (*Public Parks Act*, sec. 6 (3)), p. 671.

Last day for Railway Companies to transmit to Clerks of Municipalities statements of railway property. (*The Assessment Act*, sec. 29), page 738.

Last day which may be appointed by Councils for Collectors to return their rolls and pay over proceeds. (*The Assessment Act*, sec. 132), p. 813.

Last day for County Treasurer to furnish to Clerks of Local Municipalities list of lands in arrears for taxes for three years. (*The Assessment Act*, sec. 140), p. 818.

Medical Health Officer's term of office expires, if appointed by Lieutenant-Governor under R. S. O. cap. 205, sec. 32. (*Public Health Act*, sec. 33), p. 1037.

15—Last day for Assessors to begin to make their rolls. (*The Assessment Act*, sec. 49), p. 751.

28—Last day for Councils of Cities, Towns, Villages and Townships to pass by-laws limiting number of tavern licenses to be issued for ensuing year. (*Liquor License Act*, sec. 20 (1)), p. 906.

Last day for City or Town Council to pass by-laws to prescribe further requirements as to accommodation in taverns. (*Liquor License Act*, sec. 29), p. 911.

Last day for Council of any Municipality to pass by-laws imposing larger duty (up to $200) for tavern or shop licenses, but not more without consent of electors. (*Liquor License Act*, sec. 42 (1)), p. 919.

During this month a majority of Reeves and Deputy Reeves of United Counties may petition Lieutenant-Governor for separation of Counties. (*The Municipal Act*, sec. 38), p. 38.

MARCH.

DAY.

15—Last day on which Hares may be killed. (*Act for the Protection of Game, &c.*, sec. 1), p. 1125.

31—Last day for Councils of Cities, Towns, Villages and Townships to pass by-laws limiting number of shop licenses to be granted therein for ensuing year. (*Liquor License Act*, sec. 32 (1)), p. 912.

Boards of Park Management to make up estimate for ensuing financial year in the month of March. (*Public Parks Act*, sec. 17), p. 675.

APRIL.

DAY.

1—From this date to 1st November no person compelled to remain on markets to sell after 9 a.m. From 1st November to this date no person compelled to remain on markets to sell after 10 a.m. (*The Municipal Act*, sec. 497 (6)), p. 446.

Last day for Free Library Board to report estimates to the Council. (*Free Library Act*, sec. 6 (2)), p. 664.

Last day for Boards of Park Management to report their estimates to the Council. (*Public Parks Act*, sec. 17 (2)), p. 676.

Last day for petitions for tavern licenses to be presented. (*Liquor License Act*, sec. 11 (2)), p. 898.

Last day for License Commissioners to fix date for hearing and considering applications. (*Liquor License Act*, sec. 11 (5)), p. 898.

Last day for petitions for shop licenses to be presented. (*Liquor License Act*, sec. 31), p. 912.

Last day for removal of snow fences erected by Councils of Townships, Cities, Towns, or Villages, under R. S. O. cap. 198, sec. 3. (*Snow Fences Act*, sec. 3), p. 1004.

Last day for Treasurer of Toronto to prepare and transmit to Bureau of Industries, statement of receipts and expenditure. (*The Municipal Amendment Act, 1889*, sec. 10, p. 1205).

7—Last day for Treasurers of Local Municipalities to furnish County Treasurer with a statement of all unpaid taxes and school rates. (*The Assessment Act*, sec. 145 (1)), p. 822.

8—Last day for Collectors to return to Treasurer the names of persons in arrear for water rates in municipalities passing by-laws in that behalf. (*Municipal Waterworks Act*, sec. 21 (2)), p. 693.

20—Last day for non resident land holders to give notice to Clerk of ownership of lands in order to avoid their assessment as lands of non-residents. (*The Assessment Act*, sec. 3), p. 708.

25—Last day for Clerk to make up and deliver to Assessors list of persons requiring their names to be entered on the roll. (*The Assessment Act*, sec. 3), p. 709.

30—Last day for completion of roll by Assessor. (*The Assessment Act*, sec. 49), p. 751.

Last day for non-residents to complain of assessment by petition to proper Municipal Council. (*The Assessment Act*, sec. 77), p. 784.

Last day for License Commissioners to pass resolutions defining requisites for granting tavern and shop licenses, for limiting number of licenses, etc., for declaring houses exempt from having accommodations, for making regulations, etc. (*Liquor License Act*, sec. 4), p, 894.

Liquor licenses expire. (*Liquor License Act*, sec. 8 (1)), p. 896.

MAY.

DAY.

1—Last day for Treasurers to furnish to the Bureau of Industries statistics regarding the finances of their respective Municipalities. (*The Municipal Act*, sec. 252), page 188.

County Treasurers to complete and balance their books, charging lands with arrears of taxes. (*The Assessment Act*, sec. 152), p. 826.

Liquor licenses to be dated from. (*Liquor License Act*, sec. 8 (1)), p. 896.

Last day on which Swans or Geese may be killed. (*Act for the Protection of Game, &c.*, sec. 1), p. 1125.

Last day on which Beaver, Mink, Muskrat, Sable, Martin, Otter, or Fisher may be killed or had in possession. (*Act for the Protection of Game, &c.*, sec. 6), p. 1125.

15—Last day for issuing tavern and shop licenses. (*Liquor License Act*, sec. 8 (2)), p. 896.

31—Last day for issuing wholesale liquor licenses. (*Liquor License Act*, sec. 8 (2)), p. 896.

JUNE.

DAY.

20—Earliest day upon which statute labour to be performed. (*The Assessment Act*, sec. 113), p. 800.

30—Last day for completion of duties of Court of Revision, except where assessment taken between 1st July and 30th September. (*The Assessment Act*, sec. 64 (19)), p. 768.

Balance of license fund, after deducting expenses of License Inspector and of office of License Commissioners and expense of enforcing law, to be paid one-third to Provincial Treasurer and two-thirds to Treasurer of Municipality. (*Liquor License Act*, sec. 45 (2)), p. 922.

Residue of revenue derived from druggists, or shop, or wholesale licenses in Municipalities in which the Canada Temperance Act is in force, after payment of expenses, to be applied as the Governor in Council may direct. (*Liquor License Act*, sec 151), p. 981.

JULY.

DAY.

1—Last day for County Council to pass by-law that nominations of members of Township Councils shall be on last Monday but one in December. (*The Municipal Act*, sec. 113 (1)), p. 91.

Before or after 1st July, Court of Revision may, in certain cases, remit or reduce taxes. (*The Assessment Act*, sec. 67), p. 772.

Last day for revision of rolls by County Council with a view to equalization. (*The Assessment Act*, sec. 78), p. 785.

Last day for County Treasurer to return to Local Clerks an account of arrears due in respect of non-resident lands which have become occupied. (*The Assessment Act*, sec. 143 (2)), p. 820.

6—Last day for service of notice of appeal from Court of Revision to County Judge. (*The Assessment Act*, sec. 68 (2)), p. 773.

14—Last day for completion of duties of Court of Revision, in Shuniah. (*The Assessment Act*, sec. 64 (19)), p. 768.

20—Last day for performance of statute labour. (*The Assessment Act*, sec. 113), p. 800.

31—Last day to which County Court Judge may defer judgment on appeals from the Court of Revision. (*The Assessment Act*, sec. 68 (7)), p. 776.

AUGUST.

DAY.

1—Last day for decision by Court in complaints of Municipalities complaining of equalization. (*The Assessment Act*, sec. 9 (4)), p. 788.

11—Last day for service of notice of appeal from Court of Revision to County Judge in Shuniah. (*The Assessment Act*, sec. 68 (2)), p. 775.

14—Last day for County Clerk to certify to Clerks of Local Municipalities amounts required for County purposes. (*The Assessment Act*, sec. 85), p. 792.

Last day for Overseer of Highways to return as defaulter to Clerk of Municipality, non-resident who has not performed statute labour. (*The Assessment Act*, sec. 100 (1)), p. 797.

Last day for Overseer of Highways to return as defaulter to Clerk of the Municipality residents, owners, etc., who have not performed statute labour. (*The Assessment Act*, sec. 101 (1)), p. 798.

15—First day on which Woodcock may be killed. (*Act for the Protection of Game*, sec. 1), p. 1224.

SEPTEMBER.

DAY.

1—First day on which Duck and waterfowl may be killed. (*Act for the Protection of Game*, sec. 1), p. 1125.

First day on which Swans or Geese may be killed. (*Act for the Protection of Game*, sec. 1), p. 1125.

First day on which Grouse, Pheasants, Prairie Fowl, or Partridge may be killed. (*Act for the Protection of Game*, sec. 1), p. 1124.

First day on which Snipe, Rail, or Golden Plover may be killed. (*Act for the Protection of Game*, sec. 1), p. 1125.

14—Last day for County Court Judge to defer judgment in appeals from Court of Revision. (*The Assessment Act*, sec. 68 (7)), p. 776.

OCTOBER.

DAY.

1—Last day for returning assessment roll to Clerk in Cities, Towns and Incorporated Villages where assessment taken between 1st July and 30th September. (*The Assessment Act*, sec. 52), p. 753.

Last day for delivery by Clerks of Municipality to Collectors of the Collectors' rolls, unless some other day be prescribed by by-law of the Local Municipality. (*The Assessment Act*, sec. 120), p. 804.

15—First day on which Quail or Wild Turkeys may be killed. (*Act for the Protection of Game*, sec. 1), p. 1124.

First day on which Deer may be killed. (*Act for the Protection of Game*, sec. 1), p. 1124.

First day on which hounds may be permitted to run at large in locality where deer are found. (*Act for the Protection of Game*, sec. 1), p. 1127.

30—Last day for passing by-laws for holding first election in Junior Township, after separation. (*The Municipal Act*, sec. 91), p. 79.

NOVEMBER.

DAY.

1—From this day to 1st April no person compelled to remain on markets to sell after 10 o'clock a.m. From 1st April to this date no person compelled to remain on markets to sell after 9 o'clock a.m. (*The Municipal Act*, sec. 497 (6)), p. 446.

Last day for transmission by Local Clerks to County Treasurer of rolls of lands of non-residents whose names are not on assessment rolls. (*The Assessment Act*, sec. 121), p. 804.

Last day for transmission of copy of Tree Inspector's report to Provincial Treasurer. (*The Tree Planting Act*, sec. 6), p. 1019.

First day on which Beaver, Mink, Muskrat, Sable, Martin, Otter, or Fisher may be killed or had in possession. (*Act for the Protection of Game*, sec. 6), p. 1125.

9—Last day for Collectors to demand taxes on lands omitted from the roll, found due under sec. 154 of The Assessment Act. (*The Assessment Act*, sec. 154), p. 827.

15—Day for closing Court of Revision in Cities, Towns and Incorporated Villages when assessment taken between 1st July and 30th September. (*The Assessment Act*, sec. 52), p. 754.

On and after this date Councils of Townships, Cities, Towns, or Villages may enter on lands and erect snow fences. (*Snow Fences Act*, sec. 3), p. 1003.

Last day on which Hounds are to be allowed to run at large in locality where Deer are found. (*Act for the Protection of Game*, sec. 13), p. 1127.

20—Last day on which Deer may be killed. (*Act for the Protection of Game*, sec. 1), p. 1124.

30—Last day for Municipality to pass by-laws withdrawing from Union Health District. (*Public Health Act*, sec. 41), p. 1040.

DECEMBER.

DAY.

1—Last day for Councils to hear and determine appeals, where persons added to Collector's rolls by clerk of municipality under sec. 154 of The Assessment Act. (*The Assessment Act*, sec. 154), p. 827.

14—Last day for payment of taxes by voters in local municipalities, passing by-laws for that purpose. (*The Municipal Act* sec. 489, (2)), p. 377.

Last day for Collectors to return their rolls and pay over proceeds, unless later time appointed by Council. (*The Assessment Act*, sec. 132), p. 813.

15—Collectors in municipalities which have passed by-laws requiring taxes to be paid before 14th December, to return to Treasurer names of all persons who have not paid their municipal taxes on or before that day. (*The Municipal Act*, sec. 254 (3)), p. 190.

Councils of Towns, Townships, and Villages to hold meeting prior to the publication of annual statement of assets and liabilities. (*The Municipal Act*, sec. 263 (3)).

Last day on which Quail or Wild Turkey may be killed. (*Act for the Protection of Game*, sec. 1), p. 1124.

20—Last day for Treasurer to prepare aud transmit to Clerk of Municipality a list of all persons who have not paid their Municipal taxes on or before 14th December. (*The Municipal Act*, sec. 251), p. 188.

24—Last day for posting up annual statement of assets and liabilities in Towns, Townships and Villages. (*The Municipal Act*, sec. 263 (3*a*)), p. 195.

31—Auditors to examine and report upon accounts, etc., for year ending on the 31st December preceding their appointment. (*The Municipal Act*, sec. 263 (1)), p. 193.

Yearly taxes to be computed up to. (*The Municipal Act*, sec 364), p. 275.

Final return by Judge of County Court in Cities, Towns and Incorporated Villages when assessment taken between 1st July and 30th September. (*The Assessment Act*, sec. 52), p. 754.

Road Commissioners to cease to hold office. (*The Assessment Act*, sec. 111), p. 800.

License Commissioners to cease to hold office. (*Liquor License Act*, sec. 3), p. 893.

Nomination of candidates for office of Mayor in Cities, and for Mayor, Reeve, and Deputy Reeves in Towns to take place on last Monday in December, at 10 a.m. (*The Municipal Act*, sec. 107), p. 88.

Nomination of Councillors in Towns, and of Reeves, Deputy Reeves, and Councillors in Townships and incorporated Villages, to take place at noon on last Monday in December. (*The Municipal Act*, sec. 109), p. 90.

Nomination of candidates in Townships divided into wards to be held on last Monday in December, at 10 a.m. (*The Municipal Act*, sec. 110). 91.

Meeting of electors for nomination of Police Trustees in Police Villages to be held at noon on last Monday in December in each year. *The Municipal Act*, sec. 648 (1)), p. 612.

Members of Councils of municipalities in Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River, to be nominated on last Monday in December. (*Act respecting Algoma, etc.*, sec. 43), p. 644.

Council of any City passing a by-law declaring it expedient so to do, may appoint Auditors in December. (*The Municipal Act*, sec. 260 (1)), p. 193.

THE

MUNICIPAL MANUAL.

R. S. O. cap. 184.

An Act respecting Municipal Institutions.

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HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

Short title

1. This Act may be cited as "*The Municipal Act.*" (*a*) 46 V., c. 18, s. 1.

Interpretation of words.

2. Where the words following occur in this Act, or in the schedules thereto, they shall be construed in the manner hereinafter mentioned, (*b*) unless a contrary intention appears.

"Municipality."

1. "Municipality," shall mean any locality the inhabitants of which are incorporated, or are continued, or become so under this Act;

(*a*) This Act is a re-enactment of 46 Vict. c. 18, with subsequent amendments. The amendments made by 51 Vict. c. 28, have been noted in this proper places. References are made at the end of each section to the original Act or Acts from which the section is taken. The marginal note to the section of a statute forms no part of the statute itself, and is not binding as an explanation or construction of the statute. *Claydon* v. *Green*, *Green* v. *Claydon*, L. R. 3 C. P. 511; *Sutton* v. *Sutton*, 22 Ch. D. 511. But apparently the headings of the different portions of the statute may be referred to in order to determine the sense of any doubtful expression in a section ranged under any particular heading. See *Hammersmith and City R. W. Co.* v. *Brand*, L. R. 4 H. L. 171; *In re Kinnear and Haldimand*, 30 U. C. Q. B. 398; *Reg.* v. *Currie*, 31 U. C. Q. B. 582; *Laurie* v. *Rathbun*, 38 U. C. Q. B. 255; *In re Niagara High School Board and the Corporation of Niagara*, 39 U. C. Q. B. 362. See, however, as to the marginal notes and headings in the Revised Statutes, 50 Vict. c. 2, sec. 1.

(*b*) An interpretation clause in an Act should be understood to define the meaning of the words interpreted in cases where there is nothing in the Act opposed to or inconsistent with that meaning. *Midland R. W. Co.* v. *Ambergate, Nottingham, &c., R. W. Co.*, 10 Hare 359. The meaning of particular words in an Act, in the absence of express definition, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained. *Rex* v. *Hall*, 1 B. & C. 136; approved in *The Lion*, L. R. 2 P. C. 525. The intention of the Legislature must be ascertained from the words of the Act, and not from any general inferences to be drawn from the nature of the objects dealt with. *Fordyce* v. *Bridges*, 1 H. L. Cas. 1. See also *Logan* v. *Earl Courtown*, 13 Beav. 22. If the words are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. *Sussex Peerage Case*, 11 Cl. & F. 85. Each word must be interpreted according to its legal meaning, unless the context shew that the Legislature has used it in a popular

"Local Municipality." 2. "Local Municipality," shall mean a city, town, township, or incorporated village;

"Council." 3. "Council," shall mean the municipal council or provisional municipal council, as the case may be;

"County." 4. "County," shall mean county, union of counties or united counties, or provisional county, as the case may be;

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or more enlarged sense. *Stephenson* v. *Higginson*, 3 H. L. Cas. 638. The Act should be construed according to the ordinary and grammatical sense of its language, if there be no inconsistency apparent in its provisions. *Smith* v. *Bell*, 10 M. & W. 378. See also *Phillpott* v. *St. George's Hospital*, 6 H. L. Cas. 338. Where the intention of the Legislature can be collected from the Act itself, words may be modified, altered, or supplied, so as to obviate any repugnancy to or inconsistency with such intention. *Quin* v. *O'Keefe*, 10 Ir. C. L. R. 393; see also *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94. It is the most natural and genuine exposition of an Act to construe one part by another. *Reg.* v. *Mallow Union*, 12 Ir. C. L. R. 35. The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be put on the words consistently with the intention of preserving the existing policy untouched. *Minet* v. *Leman*, 20 Beav. 269. See also *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 142. In construing Acts which infringe on the common law, the state of the law before the passing of the Act must be ascertained, to determine how far it is necessary to alter the law in order to carry out the object of the Act. *Swanton* v. *Goold et al.*, 9 Ir. C. L. R. 234. The general law of the country is not to be altered or controlled by partial legislation made without any special reference to it. *Denton* v. *Lord Manners*, 4 Jur. N. S. 151; affirmed on appeal, 4 Jur. N. S. 724. See also *Attorney-General* v. *Earl Powis*, 1 Kay 186. *Prima facie* the proper mode of construction is to apply the same interpretation to terms used in a by-law which is applied to the same terms in the Act under the powers of which the by-law is framed. *Blashill* v. *Chambers*, 14 Q. B. D. 479. Difficulties sometimes arise owing to a conflict between general and particular Acts of Parliament. If the particular Act gives in itself a complete rule on the subject in hand, the expression of that rule would undoubtedly amount to an exception of the subject matter of the rule, not of the general Act. Per Lord Westbury, in *Ex parte St. Sepulchres*, 33 L. J. Ch. 372; see also *London, Chatham and Dover R. W. Co.* v. *Board of Works of Wandsworth*, L. R. 8 C. P. 185; *Taylor* v. *Corporation of Oldham*, 4 Ch. D. 395; *Bentley, Rotherham, and Kimberworth Local Board of Health*, *Ib.* 588. In dealing with a statute which proposes merely to repeal a former statute of limited operation and to re-enact the provisions in an amended form, the Court is not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shewn, but is to determine on the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed. *Brown* v. *McLachlan*, L. R. 4 P. C. 550. This section so far as the terms defined can be applied, extends to any Act relating to municipalities. See Rev. Stat. c. 1, sec. 10.

5. "Township," shall mean township, union of townships or united townships, as the case may be; "Township."

6. "County Town," shall mean the city, town, or village in which the assizes for the county are held; County town.

7. "Land," "Lands," "Real Estate," "Real Property," shall respectively include lands, tenements and hereditaments, and all rights thereto and interests therein; "Land." "Real estate." "Real property."

8. "Highway," "Road," or "Bridge," shall mean a public highway, road, or bridge, respectively; "Highway." "Road." "Bridge."

9. "Electors," shall mean the persons entitled for the time being to vote at any municipal election, or in respect of any by-law, in the municipality, ward, polling subdivision, or police village, as the case may be; "Electors."

10. "Reeve," shall include the deputy reeve or deputy reeves where there is a deputy reeve for the municipality, except in so far as respects the office of a Justice of the Peace. "Reeve."

11. The words "next day" shall not apply to or include Sunday or statutory holidays. 46 V. c. 18, s. 2. "Next day."

PART I.

MUNICIPAL ORGANIZATION.

TITLE I.—INCORPORATION.
TITLE II.—NEW CORPORATIONS.

TITLE I.—INCORPORATION.—*Secs.* 3–8.

3. The inhabitants of every county, city, town, village, township, union of counties, and union of townships incorporated at the time this Act takes effect, (*c*) shall continue to Existing municipal corporations continued.

(*c*) The English municipal system and the Ontario system are in many respects widely different. Corporate bodies were, from time to time, by charter and otherwise, constituted in several of the cities, towns, and boroughs of England, for the purpose of municipal government. These, however, were anything but uniform. In 1835, the 5 & 6 Will. IV. cap. 76, was passed in order to establish, if possible,

be a body corporate, with the municipal boundaries of every such corporation respectively then established. 46 V. c. 18, s. 3.

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a municipal system in England and Wales. Still there were divisions of people into parishes and hundreds where there was no incorporation. In some cases the people of the parishes, though not incorporated, were held liable to persons sustaining injury from acts of misfeasance. In some respects the liability of corporations, continued or created by this Act, for neglect of duty is identieal with the liability of parishes in England. See the decisions of Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 306, and in *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 50-53, and the language of Chancellor VanKoughnet in the last named case in appeal, 18 U. C. C. P. 13. See also *Reg.* v. *Yorkville*, 22 U. C. C. P. 437, 440; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113.

"A corporation is an artificial being—invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality (in the legal sense,) that it may be made capable of indefinite duration, and if the expression may be allowed, individuality—properties by which a perpetual succession of many persons are considered the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being." Per Marshall, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheat. 636. See *Baby* v. *Baby*, 5 U. C. Q. B. 510; *Standly* v. *Perry*, 3 S. C. R. 356. Acts done in excess of their express or implied powers are absolutely void. *In re Richmond* v. *Front of Leeds and Lansdowne*, 8 U. C. Q. B. 567; *Campbell* v. *Corporation of Elma*, 13 U. C. C. P. 296; *Miners' Ditch Co.* v. *Zellerbach*, 37 Cal. 543: but there may be cases in which the corporation is unable to avail itself of such a defence. See *Wade* v. *Brantford*, 19 U. C. Q. B. 207; *Moore* v. *Mayor, &c., of New York*, 73 N. Y. 238.

Words making any association or number of persons a corporation or body politic and corporate, vest in the corporation power to sue and be sued, to contract and be contracted with in their corporate name, to have a common seal, and to alter and change the same at their pleasure; to have perpetual succession, and power to acquire and hold personal property or movables for the purposes for which the corporation is constituted, and to alienate the same at pleasure, and also vest in any majority of the members of the corporation the power to bind the others by their acts, and exempt the individual members of the corporation from personal liability for its debts or obligations or acts, provided they do not contravene the provisions of the Act incorporating them. R. S. O., c. 1, s. 8, sub-s. 25.

4. The head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of every municipal corporation, when this Act takes effect, shall be

Heads, officers, by-laws, contracts, &c., continued.

To consider these powers more in detail.

The *first* in order is, "to sue and be sued." A municipal corporation, like an individual, under the limitations involved in its constitution and organization, may have recourse to the Courts of the country to enforce rights and redress wrongs. *Ottawa District Council* v. *Low*, 6 O. S. 546. So one municipal corporation may sue another. *Huron* v. *London*, 4 U. C. Q. B. 302. So also a municipal corporation may be sued for a breach of contract, and in certain cases for wrongful acts not arising out of contract. Thus a municipal corporation may be sued for negligence in the construction of a sewer, malfeasance in illegally obstructing a drain or water course, so as to injure the owner or owners of land adjoining, or for wrongfully diverting a stream of water on plaintiff's land. *Farrell* v. *London*, 12 U. C. Q. B. 343; *Reeves* v. *Toronto*, 21 U. C. Q. B. 157; *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32 U. C. Q. B. 562; *Darby* v. *Crowland*, 38 U. C. Q. B. 338; *Bathurst* v. *Macpherson*, 4 App. Cas. 256. To support an action against a municipal corporation of the nature suggested, although it is not necessary to shew any authority under seal to the person or persons, who, under the supposed instructions of the corporation, actually did the wrongful act, something must be shewn to connect the corporation as a body with the doing of the act. *Farrell* v. *London*, 12 U. C. Q. B. 343; *Lewis* v. *Toronto*, 39 U. C. Q. B. 343. Under particular circumstances a receiver of the tolls of an incorporated company for whom the municipal corporation has made advances may be appointed on the application of the corporation. *Brantford* v. *Grand River Navigation Co.*, 8 Grant, 246.

The *second* power is, to "contract and be contracted with." It is a principle applicable to all corporations, that they must contract under seal. To this principle there are some exceptions. See *Albert Cheese Co.* v. *Leeming*, 31 U. C. C. P. 272. One of some moment has been created with regard to municipal corporations. It is that such a corporation is liable to be sued in an action of debt on simple contract for the price of goods furnished, or labour done at their request and accepted by them. *Fetterly* v. *Russell and Cambridge*, 14 U. C. Q. B. 433. Though in such a case there be no contract under seal, the law implies an undertaking by a corporation to pay for labour and materials employed in their service, and of which they have accepted and are enjoying the benefit, provided the purpose for which the labour and materials have been applied is one clearly within the legitimate object of their charter. *Bartlett* v. *Amherstburg*, 14 U. C. Q. B. 152; *Fetterly* v. *Russell and Cambridge*, 14 U. C. Q. B. 433; *Pim* v. *Ontario*, 9 U. C. C. P. 302; *Perry* v. *Ottawa*, 23 U. C. Q. B. 391; *Brown* v. *Belleville*, 30 U. C. Q. B. 373; *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585; *Brown* v. *Lindsay*, 35 U. C. Q. B. 509. Where professional accountants were employed to examine the accounts of a municipality, it was held that they could recover, though there was no by-law directing the work to be done,

deemed the head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of

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or appointing them to do it. *Robins* v. *Brockton*, 7 O. R. 481. A municipal corporation is liable on an executed contract for work done by its order, on its behalf and for its benefit, though there be no agreement under seal, if the thing done was urgently required for the purposes of the corporation, and especially so when the price to be paid is not of large amount. *Lawrence* v. *Corporation of Lucknow*, 13 O. R. 421. The exception, however, does not extend to executory contracts, such as works, &c., *to be* done, but is confined to work in fact done and accepted. *McLean* v. *Brantford*, 16 U. C. Q. B. 347; *Wingate* v. *Enniskillen Oil Refining Co.*, 14 U. C. C. P. 379; *Mayor, &c., of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13; *Austin* v. *Guardians of Bethnal Green*, L. R. 9 C. P. 91; *Houck* v. *Whitby*, 14 Grant 671. An individual dealing with a corporation through its council or the members of the governing body, is bound to notice the objects and limits of their powers and the manner in which those powers are to be exercised, and it should be borne in mind that their acts, when beyond the scope of their authority or done in a manner unauthorized, are in general nugatory and not binding on the corporation. *Ramsay* v. *Western District*, 4 U. C. Q. B. 374; *Silsby* v. *Dunnville*, 31 C. P. 301; 8 A. R. 524. Where work was done under a contract not made with the corporation or any of its known officers, but merely with persons assuming to act as a duly appointed committee, it was held that no action would lie against the corporation. *Stoneburgh* v. *Brighton*, 5 U. C. L. J. 38. No action can be sustained for a breach of duty against the head of a corporation in not affixing the seal to a contract between a corporation and an individual, founded on a refusal which (if there had been a previous valid contract) would have constituted a breach of it; in other words, there cannot be a remedy against the head of a corporation, equivalent to a remedy on the contract against the corporation, had the contract been duly made so as to create a valid and binding agreement. *Fair* v. *Moore*, 3 U. C. C. P. 484.

Municipal corporations, when authorized to trade, and trading, appear to have the same rights and to be under the like obligations as corporations created for the purposes of trade. *Wells* v. *Mayor, &c., of Kingston-upon-Hull*, L. R. 10 C. P. 402. A corporation may be bound by acquiescence. *Pembroke* v. *Canada Central R. W. Co.*, 3 O. R. 503.

The powers of a municipal corporation to have a common seal, to acquire and hold personal property or movables, and alienate the same at pleasure, are too well known and too thoroughly understood to need comment. A corporation as well as an individual may adopt any seal. It need not declare that the seal is their common seal. See *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant 551. Proof of the signatures of the attesting officers, if the proper officers of the corporation, is *prima facie* evidence that the seal was properly affixed. Per Kinsey, C. J., in *Den* v. *Vreelandt*, 2 Halst. (N. J.) 352. The right of a corporation to acquire, hold and alienate real estate, generally depends upon the special provisions of the statute or charter. The power, when not otherwise provided, of a majority to

such corporation, as continued under and subject to the provisions of this Act. (*d*) 46 V. c. 18, s. 4.

Names of municipal corporations.

5. The name of every body corporate (not being a provisional corporation) continued or erected under this Act, shall be "*The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships* (as the case may be) *of* " (naming the same). (*e*) 46 V. c. 18, s. 5.

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bind the others by their acts, and also the exemption of individual members of the corporation from personal responsibility, will be noticed hereafter.

(*d*) See *Corporation of Ludlow* v. *Tyler*, 7 C. & P. 537 ; *Doe Governors of Bristol Hospital* v. *Norton*, 11 M. & W. 913, 928 ; *Attorney-General* v. *Kerr*, 2 Beav. 420, 429 ; *Attorney-General* v. *Newcastle*, 5 Beav. 314, 315 ; *Attorney-General* v. *Leicester*, 9 Beav. 546. See further, notes to preceding section.

(*e*) The proper corporate name of a municipal corporation ought to be used on all occasions and in all places. But it has been decided that a by-law of a municipal council is valid if it appear on the face of it to have been enacted by a municipal body having authority to make the by-law under the municipal laws. *Flewellyn* v. *Webster*, 6 O. S. 586 ; *In re Hawkins* v. *Huron, Perth, and Bruce*, 2 U. C. C. P. 72 ; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492 ; *In re Barclay and Darlington*, 11 U. C. Q. B. 470 ; *Brophy and Gananoque*, 26 U. C. C. P. 290 ; see also *Gwynne* v. *Rees*, 2 P. R. 282. Slight variances in the use of corporate names, where substantially correct, have been held immaterial even in matters of contract. *Brock District* v. *Bowen*, 7 U. C. Q. B. 471 ; *Trent and Frankford Road Co.* v. *Marshall*, 10 U. C. C. P. 336 ; *Whitby* v. *Harrison*, 18 U. C. Q. B. 603 ; *Bruce* v. *Cromar*, 22 U. C. Q. B. 321. See also *Mayor and Burgesses of Lynne Regis*, 10 Rep. 120, 122 ; *Mayor of Carlisle* v. *Blamire*, 8 East. 487 ; *Rex* v. *Croke*, Cowp. 29 ; *Beverley* v. *Barlow*, 10 U. C. C. P. 178 ; *In re Goodwin and Ottawa and Prescott R. W. Co.*, 13 U. C. C. P. 254. It was, however, held differently as to the intitling of a rule in a proceeding against a municipal corporation. *In re Sams* v. *Toronto*, 9 U. C. Q. B. 181. The general rule is, that a variation from the precise name of the corporation when the true name is necessarily to be collected from the instrument or is shewn by proper averments, will not invalidate a grant by or to a corporation or a contract with it, and the modern cases shew an increased liberality on this subject. Per Chancellor Kent, in 2 Kent's Com. 292 ; approved in *St. Louis Hospital* v. *Williams*, 19 Mo. 609. See further, *President* v. *Myers*, 6 Serg. & Rawle, (Pa.,) 12 ; *Milford Co.* v. *Brush*, 10 Ohio 111 ; *People* v. *Runkle*, 9 Johns 147. A municipal corporation has no power to change its name. See *Reg.* v. *Registrar of Joint Stock Companies*, 10 Q. B. 839 ; *Episcopal Charitable Society* v. *Episcopal Church*, 1 Pick. 372 ; see further, *Rex* v. *Morris*, 1 Ld. Raym. 337 ; *Reg.* v. *Bailiffs of Ipswich*, 2 Ld. Raym. 1232, 1238, 1239.

Names of Provisional corporations.

6. The inhabitants of every junior county, upon a provisional council being or having been appointed for the county, shall be a body corporate (*f*) under the name of "*The Provisional Corporation of the County of* " (naming it.) (*g*) 46 V. c. 18, s. 6.

Inhabitants of counties, townships, &c, and of cities, towns, &c., to be a body corporate.

7. The inhabitants of every county, or union of counties erected by proclamation into an independent county or union of counties, and of every township or union of townships, erected into an independent township or union of townships, and of every locality erected into a city, town, or incorporated village, and of every county or township separated from any incorporated union of counties or townships, and of every county or township, or of the counties or townships, if more than one, remaining of the union after the separation, being so erected or separated after this Act takes effect, shall be a body corporate under this Act. (*h*) 46 V. c. 18, s. 7.

Corporate powers to be exercised by council

8. The powers of every body corporate under this Act shall be exercised by the council thereof. (*i*) 46 V. c. 18, s. 8

(*f*) See note *c* to sec. 3.

(*g*) See note *e* to sec. 5.

(*h*) See note *c* to sec. 3.

(*i*) The council is not the corporation, but the legislative and executive body of the corporation. It fluctuates from year to year, while the corporate body is, as it were, immortal. See *Harrison* v. *Williams*, 3 B. & C. 162; *Reg.* v. *Paramore*, 10 A. & E. 286; *Reg.* v. *York*, 2 Q. B. 850. Its powers are limited. It has no other powers than such as are expressly granted, or such as are necessary to carry into effect the powers expressly granted. *Hodges* v. *Buffalo*, 2 Denio 112. See also *In re Ross and York*, 14 U. C. C. P. 171; *Cornwall* v. *Corporation of West Nissouri*, 25 U. C. C. P. 9; *City of Placeville* v. *Wilcox*, 2 Withrow 63. See further *Lowell* v. *City of Boston*, 15 Am. 39; *The State ex rel. Griffith* v. *Oswokee Township*, 19 Am. 99. Until the case of *Hodges* v. *Buffalo* was decided, nothing was more frequent in the United States than for city authorities to vote largesses and give splendid banquets for objects and purposes having no possible connection with the growth or weal of the body politic, thus subjecting their constituents to unnecessary and oppressive taxation. Per Pratt, J., in *Halstead* v. *Mayor of New York*, 3 Comst. 433. See further *Hood* v. *Lynn*, 1 Allen (Mass.) 103; *Gerry* v. *Stoneham*, *Ib.* 319; *Cornell* v. *Guilford*, 1 Denio 510; *Claffin* v. *Hopkinton*, 4 Gray 502; *Tash* v. *Adams*, 10 Cush. 252. The action of municipal councils is to be held strictly within the limits prescribed by the statute. See notes to sec. 282. Within these limits they are to be favoured by the Courts. See *Smith* v. *Mad-*

TITLE II.—NEW CORPORATIONS.

Div. I.—Villages.
Div. II.—Towns and Cities.
Div. III.—Townships.
Div. IV.—Counties.
Div. V.—Provisional County Corporations.
Div. VI.—Matters Consequent upon the Formation of New Corporations.

Division I.—Villages. (*j*).

When a Village may be incorporated. Sec. 9.
Restrictions as to area of Towns and Villages. Sec. 10.
Arrangements with respect to assets and debts of Townships. Sec. 11.
Case of Village partly in two Counties provided for. Sec. 12.
Arrangements as to debts when Village transferred from one County to another. Sec. 13.
Additions to area. Sec. 14.
Reductions of area. Sec. 15.
Annexation of incorporated Village to adjoining municipality. Sec. 16.
Setting apart unincorporated Village. Sec. 17 (1).
Powers of Township in relation thereto. Sec. 17 (2-4).

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dison, 7 Ind. 86; *Kyle* v. *Malin*, 8 Ind. 34, 37. Parties dealing with the agents or officers of a municipal corporation must at their peril take notice of the limits of the powers. *Maryland ex rel. Baltimore* v. *Kirkley et al.*, 29 Md. 85; 2 Withrow 406. It is sometimes supposed that members of a municipal council exceeding their corporate powers may be held personally liable for their acts. See *Thomas* v. *Wilson*, 20 U. C. Q. B. 331. But assuming a want of power on the part of the council, it does not follow that the members of the council are personally liable on the contract. *East Nissouri* v. *Horseman*, 9 U. C. C. P. 189. The fact of an agent entering into a contract without authority does not, *per se*, render him liable on the contract. *Jenkins* v. *Hutchinson*, 13 Q. B. 744, *Lewis* v. *Nicholson*, 18 Q. B. 503; *Carr* v. *Jackson*, 7 Ex. 382; *Mill* v. *Hawker*, L. R. 9 Ex. 309; 10 Ex. 92. But an agent assuming to have an authority which he has not, may be sued on an implied contract by him that he had the authority which he professed to have. *Randell* v. *Trimen*, 18 C. B. 786, 794; *Collen* v. *Wright*, 7 E. & B. 301; 8 E. & B. 647; *Warlow* v. *Harrison*, 1 E. & E. 295. See also *Simons* v. *Patchett*, 7 E. & B. 568. Where a contract is signed by one who professes to be an agent, but who has no principal existing at the time, and the contract would be wholly inoperative unless binding on him, he is personally bound. *Kelner* v. *Baxter*, L. R. 2 C. P. 174. See further note *c* to sec. 3.

(*j*) Portions of sections 10 and 15 relate also to towns. As to erection of a village into a town, see sec. 19.

When population 750 county council may incorporate as a village, and name place and the returning officer for first election.

9. When the census returns of an unincorporated village, with its immediate neighbourhood, taken under the direction of the council or councils of the county or counties in which the village and its neighbourhood are situate, (*k*) shew that the same contain over 750 inhabitants, and when the residences of such inhabitants are sufficiently near to form an incorporated village, then, on petition by not less than 100 resident freeholders and householders of the village and neighbourhood, of whom not fewer than one-half shall be freeholders, the council or councils of the county or counties in which the village and neighbourhood are situate shall, by by-law, erect the village and neighbourhood into an incorporated village, apart from the township or townships in which the same are situate, by a name, and with boundaries to be respectively declared in the by-law, and shall name in the by-law the place for holding the first election, and the returning officer who is to hold the same. (*l*) 46 V. c. 18, s. 9.

Area of town or village limited.

10.—(1) No town or village incorporated after the passing of this Act, the population of which does not exceed 1,000

(*k*) *Semble*, that a by-law incorporating a village is not necessarily illegal by reason of the mere fact that the census was in reality taken before the by-law authorizing the enumeration of the people had been passed by the county council, but where the census was shewn to be wholly unreliable effect was given to this objection. *Re Fenton* v. *County of Simcoe*, 10 O. R. 27.

(*l*) Municipal bodies are the creatures of the Legislature, and therefore subject to legislative control. The Legislature may increase, abridge, sub-divide, or abolish them. *Cobb* v. *Kingman*, 15 Mass. 197; *Richland* v. *Lawrence*, 12 Ill. 1; *Gorham* v. *Springfield*, 21 Maine 61. The power conferred by this section is, strictly speaking, a legislative power. See *People ex rel. Shumway* v. *Bennett*, 18 Am. 107; *Damodhar Gordhan* v. *Deoram Kanji*, 1 App. Cas. 332. The general proposition is, that the Legislature is the only body authorized to make laws. But under the B. N. A. Act, provincial Legislatures can entrust to commissioners power to make regulations in the nature of police or municipal regulations of a merely local character. *Hodge* v. *Reg.*, 9 App. Cas. 117. See also *Reg.* v. *Burah*, 3 App. Cas. 889; *Powell* v. *Apollo Candle Co.*, 10 App. Cas. 282. In the United States, where, under a written constitution, constitutional questions have been frequent, it has been held competent for the Legislature of a State to delegate to municipal corporations the powers to make by-laws affecting only the inhabitants of their several localities. See *St. Paul* v. *Coulter*, 12 Min. 41; *Commonwealth* v. *Duquet*, 2 Yeates (Pa.) 493; *State* v. *Clark*, 8 Fost. (N. H.) 176; *Hill* v. *Decatur*, 22 Geo. 203; *Milne* v. *Davidson*, 8 Martin (La.) 586; *Markle* v. *Akron*, 14 Ohio 586; *Mayor* v. *Morgan*, 9 Martin (La.) 381; *Metcalf* v. *St. Louis*, 11 Mo. 103; *Ashton* v. *Ellsworth*, 48 Ill. 299. Where powers are delegated they must be strictly followed. See *Cook* v. *Ward*, 2 C. P. D. 225.

souls, shall extend over or occupy within the limits of the incorporation an area of more than 500 acres of land.

Regulations as to enlargement of area.

(2) No town or village already or hereafter incorporated, and containing a population exceeding 1,000 souls, shall make any further addition to its limits or area, except in the proportion of not more than 200 acres for each additional 1,000 souls, subsequent to the first 1,000.

Existing towns or villages area of which exceeds proportionate limit not to be enlarged.

(3) In the case of towns or villages now incorporated, whenever the area thereof exceeds the proportionate limit above prescribed, to wit, in all cases where the area exceeds the proportion of 500 acres for the first 1,000 souls, and 200 acres for every subsequent additional 1,000, then in such cases the said towns or villages shall not be permitted to make any further addition to their limits until their population has reached such a proportion to their present area.

How population and area may be reckoned.

(4) But in all cases, the persons then actually inhabiting the land about to be included within the limits of a town or village, may, for the purpose of such extension, be held and reckoned as among the inhabitants of such town or village; and the land occupied by streets or public squares may be excluded in estimating the area of such town or village. 46 V. c. 18, s. 10.

Disposition of property and payment of debts when incorporated village is separated from township.

11. In cases where an incorporated village is separated from the township or townships in which it is situate, the provisions of this Act for the disposition of the property, and payment of debts, upon the dissolution of a union of townships, shall be applicable as if the localities separated had been two townships, and the councils of such village and township or townships shall respectively perform the like duties as by such provisions devolve upon the councils of separated townships, the said village being considered as the junior township. (*m*) 46 V. c. 18, s. 11.

When the village lies within two or more counties, it shall be annexed to one of them by the county councils or in case of difference by the Lieut-Governor.

12.—(1) When the newly incorporated village lies within two or more counties, the councils of the counties shall, by by-law, annex the village to one of the counties; and if within six months after the petitions for the incorporation of the village are presented, the councils do not agree to which county the village shall be annexed, the wardens of the counties shall memorialize the Lieutenant Governor in Council, setting forth the grounds of difference between the

(*m*) See sec. 30 and notes thereto.

councils; and thereupon the Lieutenant-Governor shall, by proclamation, annex the village to one of such counties.

In case of failure of councils to act, freeholders, &c., may petition Lieutenant-Governor.

(2) In case the wardens do not, within one month next after the expiration of the six months, memorialize the Lieutenant-Governor in Council as aforesaid, then 100 of the freeholders and householders on the census list may petition the Lieutenant-Governor in Council to settle the matter, and thereupon the Lieutenant-Governor shall, by proclamation, annex the incorporated village to one of the counties. 46 V. c. 18, s. 12.

Liability of territory detached from one county and annexed to another.

13.—(1) In case a locality is, under section 12 of this Act, detached from one county and annexed to another, the council of the county to which the locality is annexed and the council of the village shall agree with the council of the county from which the locality is detached, as to the amount (if any) of the county liabilities which should be borne by the locality so detached, and the times of payment thereof. (*n*)

(2) If the councils do not agree within three months of the separation in respect of the said matter, the same shall be determined by arbitration under this Act; (*o*) and the amount (if any) so agreed or determined shall become a debt of the county to which the locality is attached, and such locality shall, until the said amount has been paid by the proceeds of such rates, continue subject to all rates which had been, prior to the separation, imposed for the payment of county debts, or for the payment of bonuses or aids granted by sections of the county to railways, or for the payment of local improvement debts.

(3) The council of the county or of the village, as the case may require, shall pass such by-laws and take such pro-

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(*n*) Locality, under our system of municipal government, is subject to taxation. Each portion of a county therefore should bear its proper proportion of the taxation of the whole county. Where a portion is detached from one and added to another county, some mode of adjustment of existing liabilities becomes indispensable. See *McKee* v. *Huron District Court*, 1 U. C. Q. B. 368; *In re North Dumfries* v. *County of Waterloo*, 12 U. C. Q. B. 507; *County of Wellington* v. *Township of Waterloo*, 8 U. C. C. P. 358; *County of Wellington* v. *Township of Wilmot*, 17 U. C. Q. B. 82. See further Dillon on Municipal Corporations, 3rd ed. sec. 185.

(*o*) See sec. 385, *et seq.*

ceedings as may be necessary for levying the said rates; and shall, unless such council has previously paid the amount to the municipality so liable, pay over the same when collected to the municipality which is liable for the debt on account of which the rates were imposed.

(4) Where the councils do not agree as aforesaid, the Lieutenant-Governor in Council may, before proclamation has been made, and upon the petition of a majority of the resident freeholders and householders of the village, and with the assent of at least two of the councils of the townships in which the village is situate, annul the incorporation of the village and restore the same to its former position as an unincorporated village, and the same shall thereupon be reinstated to its former position to the same extent as if no proceedings for incorporation had ever been taken. 46 V. c. 18, s. 13.

Addition to villages by Lieutenant Governor.

14. In case the council of an incorporated village petitions the Lieutenant-Governor to add to the boundaries thereof, (*p*) the Lieutenant-Governor may, subject to the provisions of section 10 of this Act, by proclamation add to the village any part of the localities adjacent, which, from the proximity of the streets or buildings therein, or the probable future exigencies of the village, it may seem desirable to add thereto; (*q*) and in case the territory so added belonged to another county, it shall thenceforward, for all purposes, cease to belong to such other county, and shall belong to the same county as the rest of the village. 46 V. c. 18, s. 14.

Reducing the area of villages or towns.

15.—(1) The county council of any county or union of counties upon the application by petition of the corporation

(*p*) Municipal councils are local governing bodies. The localities over which their jurisdiction extends ought to be certain and well defined. Cities, towns, townships and incorporated villages may pass by-laws for ascertaining and establishing the boundary lines of the municipality according to law, in case the same has not been done, and for the erection and preservation of durable monuments. Sub-sec. 56 of sec. 489. See *Cutting* v. *Stone*, 7 Vt. 471; *Gray* v. *Sheldon*, 8 Vt. 402; *Pierce* v. *Carpenter*, 10 Vt. 480. See also *Hamilton* v. *McNeill*, 13 Gratt. (Va.) 389; *Raab* v. *Maryland*, 7 Md. 483; *Green* v. *Cheek*, 5 Ind. 105; *Elmendorf* v. *New York*, 25 Wend. 693; *People* v. *Carpenter*, 24 N. Y. 86.

(*q*) The power to add to boundaries is one that should exist somewhere. By this section, subject to the provisions of sec. 10 of this Act, it is vested in the Lieutenant-Governor in Council.

of any incorporated village or town not withdrawn from the county and with a population as ascertained by the last municipal enumeration (*r*) not exceeding 2,000, whose outstanding obligations and debts do not exceed double the net amount of the yearly rate then last levied and collected therein, may, in their discretion, by by-law in that behalf, reduce the area of such village or town by excluding from it lands used wholly for farming purposes. (*s*)

New limits to be defined.

(2) The by-law shall define, by metes and bounds, the new limits intended for such incorporated village or town. (*t*)

Population not to be reduced below 750.

(3) No incorporated village or town shall by such change of boundaries be reduced in population below the number of 750 souls. (*u*)

Municipal rights of village or town not to be abridged.

(4) The municipal privileges and rights of the village or town shall not thereby be diminished, or otherwise interfered with as respects the remaining area thereof. (*v*) 46 V. c. 18, s. 15.

An incorporated village may become unincorporated and may be annexed to an adjoining municipality

16.—(1) In case the council of an incorporated village pass a resolution, by a two-thirds vote of the members thereof, declaring that it is expedient that the village should become unincorporated, and the resolution is approved by the electors in the manner required for by-laws creating debts; (*w*) and in case the council of an adjoining municipality, or of two or more of the adjoining municipalities, pass a resolution or resolutions approving of the territory comprised in the vil-

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(*r*) By sec. 479, sub-s. 13, power is given to pass by-laws for taking a local census.—See also sec. 18.

(*s*) This is the opposite of the power of extension. But while the latter is vested in the Lieutenant-Governor in Council, the power of contraction is by this section, subject to certain checks after mentioned, vested in the county council.

(*t*) See note *p* to sec. 14.

(*u*) This is the number made necessary for the incorporation of a village. See sec. 9.

(*v*) There cannot exist in the same locality two municipal bodies exercising similar powers. Each municipal council, no matter what its area, is independent, or ought to be independent, of every other similar municipal council. See *Rex* v. *Passmore*, 3 T. R. 243; *Rex* v. *Amery*, 2 Bro. P. C. 336; *Patterson* v. *Society*, &c., 4 Zabriskie, (N. J.) 385; *Milne* v. *Mayor*, 13 La. 69; *Hamilton* v. *McNeil*, 13 Gratt. (Va.) 389; *People* v. *Farnham*, 35 Ill. 562.

(*w*) See sec. 340, *et seq.*

lage being annexed to such municipality or municipalities, the Lieutenant-Governor in Council may issue a proclamation annulling the incorporation of the village, and annexing the territory included therein to such municipality or municipalities. (*x*)

(2) If the said territory is annexed to one municipality, such municipality shall be liable for the debts of the village, and shall be entitled to its assets, but if the territory is annexed to two or more municipalities, the councils of such municipalities shall, before the proclamation issues, agree between themselves, or determine by arbitration, (*y*) as to the proportion of the debt of the village to be borne by them respectively, and as to the assets, or proportion of the assets, of the said village which the municipalities shall respectively receive, and the municipalities shall respectively be liable for the proportion of indebtedness as determined by the agreement or award.

(3) If the award or agreement instead of stating the proportion of the debt to be borne as aforesaid, states the shares so to be borne in sums of money, then the fraction which is formed by taking the sum named as the amount to be borne by any municipality as the numerator, and the aggregate of the sums named as the amounts to be borne by the said municipalities as the denominator, shall be the proportion of the entire debt to be borne by such municipality, whether or not the debt is accurately stated in the agreement or award.

(4) It may be part of the arrangement between the village and the municipality or municipalities that the village shall, for a time, be charged with a special rate, or that it shall be relieved of any rate, or part of a rate, imposed upon the rest of the municipality with which the village, or part of it, is to be united.

(5) In case the municipalities proposing to receive parts of the territory comprised in the village are in different counties, the provisions of this section may be acted upon with the assent (declared by resolution) of the councils, and unless such councils have previously agreed, or shall within three months of the issue of a proclamation under this section

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(*x*) By sub-s. 5 provision is made for annexation to municipalities in different counties.

(*y*) See sec. 385 *et seq.*

agree, as to the proportions in which the share of the county debt, which is referable to such village, shall be borne by the several counties, the same shall be determined by arbitration under this Act. (*z*)

(6) Where part of the village is to be attached to a city or town separated from the county for municipal purposes, such separated city or town shall be deemed a county within the meaning of the next preceding sub-section. (*a*) 46 V. c. 18, s. 16.

Setting apart unincorporated villages.

17.—(1) When any unincorporated village or settlement and its immediate neighbourhood lies wholly within the limits of a township, and when the residences of its inhabitants are sufficiently near to each other, in the opinion of the council of such township municipality, to render the same desirable, the council of the township in which the same are situate may, on the petition of a majority of the ratepayers within the area to be set off, one-half of whom shall be resident freeholders, by by-law, set the unincorporated village or settlement and neighbourhood apart from the remaining portion of the township in which the same are situate, and with boundaries to be respectively defined and declared in the by-law, for the purposes hereinafter mentioned. (*b*)

Jurisdiction of township continued.

(2) All the powers given to the council of every township by this Act shall remain in force as respects the portion of the township so set apart, and are hereby continued and extended to the council of every township wherein the portion thereof is so set apart, except so far as the same are or may be inconsistent with the enactments of this section.

Additional powers of township councils.

(3) In addition to the powers given to the council of every township by this Act, the council of every township wherein a portion has been set apart under the provisions of this Act, shall have all the rights and powers conferred on the councils of

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(*z*) See sec. 385 *et seq.*

(*a*) No provision is made for the expenses rendered necessary by the transfer of territory from one registry division to another. It is presumed that it would be the duty of the county or city receiving additional territory to pay the costs incurred in making the transfer under the Registry Act, Rev. Stat. c. 114.

(*b*) This provision enables a portion of a township to obtain benefits which it could not otherwise obtain without incorporation as a village, and is of use, where incorporation is not possible.

cities, towns and incorporated villages by this Act, as respects such portions as shall be so set apart, and may pass by-laws which shall apply exclusively and only to that portion of the township so set apart for the following purposes :

(*a*) To compel all persons (resident or non-resident liable to statute labour within such prescribed limits, to compound for such labour at any sum not exceeding $1 for each day's labour, and that such sum shall be paid in commutation of such statute labour, and for enforcing the payment of such commutation in money in lieu of such statute labour. (*c*)

(*b*) For all the purposes specified in sections 612 to 630, both inclusive of this Act. 48 V. c. 39, s. 39, (1-3.)

(4) Whenever in a township two or more portions thereof shall be so set apart as aforesaid, which shall adjoin, or lie contiguous to each other, the council of the township shall have power to pass a by-law uniting such separate divisions, so previously set apart, into one division, whereupon the council shall have all the powers over, and relating to the united divisions, as if the whole area embraced within the limits of the several divisions so united had originally been set apart under the provisions of this Act in one parcel. 49 V. c. 37, s. 36.

Division II.—Towns and Cities.

Towns and Cities, how formed, and limits. *Secs.* 18-20.
Restrictions as to area of Towns. *Sec.* 10.
Wards, and additions to area. *Secs.* 21-23.
Annexation of incorporated Villages or Towns to adjacent Villages, Towns, or Cities. *Sec.* 24.
Towns, how withdrawn from and re-united to jurisdiction of County. *Secs.* 25, 26.

18. A census of any town or incorporated village, may at any time be taken under the authority of a by-law of the council thereof. (*d*) 46 V. c. 18, s. 17. Census of towns and villages.

(*c*) See sec. 521, sub-ss. 1-8.

(*d*) This and the following sections are designed to facilitate the formation of villages into towns, and towns into cities, whenever the population is sufficiently increased to admit of the changes. The census authorized under this section may be taken "at any time."

Town containing over 15,000 inhabitants may be erected into a city; and village containing over 2,000 into a town.

19. In case it appears by the census return taken under such by-law, or under any statute, that a town contains over 15,000 inhabitants, the town may be erected into a city; and in case it appears by the return that an incorporated village contains over 2,000 inhabitants, the village may be erected into a town; but the change shall be made by means of and subject to the following proceedings and conditions:—

Notice to be given.

1. The council of the town or village, shall, for three months after the census return, insert a notice in some newspaper published in the town or village, or, if no newspaper is published therein, then the council shall, for three months, post up a notice in four of the most public places in the town or village, and insert the same in a newspaper published in the county town of the county in which the town or village is situate, or if there is no such newspaper, then in the newspaper published nearest to the said town or village, setting forth in the notice the intention of the council to apply for the erection of the town into a city, or of the village into a town, and stating the limits intended to be included therein; (*e*)

Census returns to be certified and publication of notice proved.

2. The council of the town or village shall cause the census returns to be certified to the Lieutenant-Governor in Council, under the signature of the head of the corporation, and under the corporate seal, and shall also cause the

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In this respect it differs from a census taken under a statute, which is usually required to be taken at fixed periods. If the necessary population be shewn by a census taken under a statute, the necessary action as to formation may also be had. See sec. 19. See also sec. 479, sub-s 13.

(*e*) Two things are here to be observed; first, the contents of the notice; second the mode of publication. The notice should not only set forth the intention of the council to apply for the erection of the village into a town, or of the town into a city, but state the limits intended to be included therein. The notice should, for three months after the census return, be inserted in some newspaper published in the village or town. If no such newspaper, the notice should be posted up for three months in four of the most public places in the village or town, and inserted in a newspaper published in the county town, or, if no such newspaper as last mentioned, then in the newspaper published *nearest* to the village or town. See, as to the notice necessary in the case of the alteration of school boundaries, *Ness* v. *Saltfleet*, 13 U. C. Q. B. 408; *In re Ley* v. *Clark*, 13 U. C. Q. B. 435; *In re Taylor* v. *West Williams*, 30 U. C. Q. B. 346; *Patterson* v. *Hope*, 30 U. C. Q. B. 484. See further sec. 293 and notes thereto.

publication aforesaid to be proved to the Lieutenant-Governor in Council; then, in the case of a village, the Lieutenant-Governor may, by proclamation, erect the village into a town by a name to be given thereto in the proclamation; (*f*)

Village may be made a town by proclamation.

3. In case the application is for the erection of a town into a city, the town shall also pay to the county of which it forms part, (*g*) such portion, if any, of the debts of the county as may be just, or the council of the town shall agree with the council of the county as to the amount to be so paid, and the periods of payment with interest from the time of the erection of the new city, or in case of disagreement the same shall be determined by arbitration under this Act; (*h*) and upon the council proving to the Lieutenant-Governor in Council the payment, agreement, or arbitration, then the Lieutenant-Governor may, by proclamation, erect the town into a city, by a name to be given thereto in the proclamation. (*i*) 46 V. c. 18, s. 18.

Existing debts to be adjusted in case of a town to be made a city.

Town may be made a city by proclamation.

20. The Lieutenant-Governor may include in the new town or city such portions of any township or townships adjacent thereto, and within the limits mentioned in the aforesaid notice, (*j*) as, from the proximity of streets or buildings, or the probable future exigencies of the new town or city, the Lieutenant-Governor may consider desirable to attach thereto. (*k*) 46 V. c. 18, s. 19.

Limits of such new town or city.

(*f*) Two things are here made necessary; first, that the census returns should be certified to the Lieutenant-Governor in Council; second, that proof of the publication of the notice referred to in the last note should be adduced to the Lieutenant-Governor in Council. The certificate as to the census must be not only under the seal of the corporation, but under the signature of the head of the corporation. No provision is made as to the mode of proof of notice, whether by certificate or affidavit; this is left entirely to the discretion of the Lieutenant-Governor in Council.

(*g*) A city, for municipal purposes, becomes a county in itself. Hence the necessity for the adjustment of a county debt before a separation takes place.

(*h*) See sec. 385 and following sections.

(*i*) The power is here conferred, not only to create a new municipality, but to give it a name. The name can only be changed by the Legislature. See note *e* to sec. 5.

(*j*) See note *f supra*.

(*k*) Municipalities being localities must have boundaries to separate them from other similar localities, see note *p* to sec. 14, and with-

Wards.

21. The Lieutenant-Governor may divide the new town or city into wards, with appropriate names and boundaries, (*l*) but no town shall have less than three wards, and no ward in such town or city less than 500 inhabitants. 46 V. c. 18, s. 20.

New division of wards in cities and towns.

22. In case two-thirds of the members of the council of a city or town do, in council, (*m*) before the 15th day of July in any year, (*n*) pass a resolution affirming the expediency of a new division into wards being made of the city or town, or of a part of the same, (*o*) either within the existing limits or with the addition of any part of the localities adjacent, which, from the proximity of streets or buildings therein, or the probable future exigencies of the city or town, it may seem desirable to add thereto respectively, or the desirability of any addition being made to the limits of the city or town, the Lieutenant-Governor may, by proclamation, divide the city or town or such part thereof into wards, as may seem expedient, (*p*) and may add to the city or town any part of the adjacent township or town-

Extension of city or town.

ships which the Lieutenant-Governor in Council, on the grounds aforesaid, considers it desirable to attach thereto on such terms and conditions as to taxation, or otherwise, as

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out express legislative authority, municipal councils have no power to acquire lands beyond their local limits. *North Hempstead* v. *Hempstead*, 2 Wend. 131; *Denton* v. *Jackson*, 2 Johns. Ch. 336; *Riley* v. *Rochester*, 9 N. Y. 64; *Chambers* v. *St. Louis*, 29 Mo. 543; *Girard* v. *New Orleans*, 2 La. An. 897; *Concord* v. *Boscawen*, 17 N. H. 465. See further secs. 282, 490 (57), 504 (8).

(*l*) See note *p* to sec. 14.

(*m*) This, it is apprehended, means a majority of two-thirds of the *whole* number of councillors, and not merely two-thirds of a less number present at the meeting, though the number present be sufficient to form a quorum for ordinary business.

(*n*) It ought to be observed that the time is here expressly limited. If the act authorized, be done after the time limited, it would, it is apprehended, looking at the subject matter of the section, be a nullity.

(*o*) A municipal council ordinarily does public acts through the instrumentality of a by-law. No by-law is, however, here necessary. A formal resolution is all that is required. One difference between a municipal by-law and a resolution is, that the former must bear the corporate seal, and the latter need not do so. See sec. 288 and notes thereto.

(*p*) A change in one or more wards of a city or town, without disturbing the remaining wards, is contemplated.

the Lieutenant-Governor in Council sees fit, and the council of the city or town may consent to. (*q*) 46 V. c. 18, s. 21.

Where land attached to town, &c., belonged to another county.

23. In case a tract of land so attached to the town or city belonged to another county, the same shall thenceforward for all purposes cease to belong to such other county, and shall belong to the same county as the rest of the town or city. (*r*) 46 V. c. 18, s. 22.

Annexation of incorporated villages or towns to adjacent villages, towns or cities by proclamation.

24.—(1) In case the council of any incorporated village or town pass a resolution affirming the expediency of the annexation of such village or town to an adjacent village, town or city, and the municipal council of such last mentioned village, town or city, pass a similar resolution, and in case the electors of the first mentioned village or town adopt a by-law, to be submitted to them, approving of such annexation, (*s*) the Lieutenant-Governor in Council may, by proclamation, annex one municipality to the other, upon such terms as may have been agreed upon by the councils, or as may have been determined by arbitration, in case the councils resolve to have the terms settled by arbitration. (*t*)

(2.) Subject to any variations made by the terms agreed upon or settled in manner aforesaid, the municipality annexed to the other shall be subject to the provisions of this Act having regard to the annexation of territory to a village, town or city. (*u*)

(*q*) This admits of tracts of adjacent townships being added to cities or towns. It would seem to be in the discretion of the Lieutenant-Governor to fix or define the wards, or make any necessary alterations therein, but it is probable that the wishes of the town or city council would be complied with by him. It may therefore be important that the resolution should explicitly state the changes or additions deemed expedient by the council. No published or other notice of the intended application is required. As to the provisions for enlarging the area of towns. See sec. 10.

(*r*) Towns and cities, for some purposes, continue parts of the county in which situate. See sec. 25. This section provides for the annexation, for all purposes, of lands detached under the operation of the foregoing section. As to schools see 51 V. c. 28, s. 40.

(*s*) The by-law has to be adopted by the electors of the village or town which by the annexation is merged with the other town, village or city.

(*t*) See sec. 385 *et seq.*

(*u*) See secs. 14, 20, 22.

(3.) In case the population admits thereof, the Lieutenant-Governor may, by the same proclamation, erect the village or town to which the addition is made, into a town or city, by a name to be given thereto in the proclamation, and may divide or re-divide the city, town or village into wards. 46 V. c. 18, s. 23.

(4.) In case a petition signed by one hundred and fifty qualified municipal electors of any town or incorporated village, be presented to the council of such town or incorporated village asking that a by-law be submitted for the annexation of such town or incorporated village to an adjacent village, town or city, either unconditionally or upon such terms as may be set out in said petition, it shall be the duty of such council to submit a by-law for the annexation of the said incorporated village or town to a vote of the municipal electors of the said town or incorporated village, and said council shall forthwith prepare a by-law directing the submission of the question in accordance with the prayer of the petition, and shall submit the same to the said municipal electors for approval or otherwise within four weeks after the receipt of the petition by the said council.

(5.) A by-law which is duly carried under the provisions of the last preceding sub-section, by the vote of the municipal electors of said town or incorporated village shall, within a reasonable time, but not exceeding one month thereafter, be adopted by said council.

(6.) Thereupon the council of such adjacent village, town, or city may, by resolution, assent to the annexation of such town or incorporated village aforesaid.

(7.) In the event of the annexation of any such town or incorporated village as aforesaid having been approved of and assented to in manner hereinbefore provided, the same may be carried into effect by proclamation of the Lieutenant-Governor in Council, as hereinbefore provided. (*v*) 51 V. c. 28, s. 2.

Town may be withdrawn from jurisdiction

25. The council of any town may pass a by-law to withdraw the town from the jurisdiction of the council of the

(*v*) The last four sub-sections of this section enable the electors to determine the question of annexation for themselves in case the council does not act. As to the time when incorporation or annexation takes effect. See s. 89.

county within which the town is situated, upon obtaining the assent of the electors of the town to the by-law in manner provided by this Act, subject to the following provisions and conditions: of county by by-law on certain conditions.

1. After the final passing of the by-law, the amount which the town is to pay to the county for the expenses of the administration of justice, the use of the gaol, and the erection and repairs of the registry office, and for providing books for the same, and for services for which the county is liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands, as well as for the then existing debt of the county, if not mutually agreed upon, shall be ascertained by arbitration under this Act; (*w*) and the agreement or award shall distinguish the amount to be annually paid for the said expenses, and for the then debt of the county, and the number of years the payments for the debt are to be continued; Amount to be paid by town to county to be settled by agreement or arbitration.

2. In adjusting their award, the arbitrators shall, among other things, take into consideration the amount previously paid by the town, or which the town is then liable to pay, for the construction of roads or bridges by the county, without the limits of the town; and also what the county has paid, or is liable to pay, for the construction of roads or bridges within the town; and they shall also ascertain and allow to the town the value of its interest in all county property, except roads and bridges within the town; Matters to be considered by arbitrators.

3. When the agreement or award has been made, a copy of the same, and of the by-law, duly verified by affidavit, shall be transmitted to the Lieutenant-Governor, who shall thereupon issue his proclamation, withdrawing the town from the jurisdiction of the council of the county; (*x*) Copy of agreement or award to be sent to the Lieut.-Governor. Proclamation.

4. After the proclamation has been issued, the offices of reeve and deputy reeve or deputy reeves of the town shall cease; (*y*) and no by-law of the council of the county thereafter made shall have any force in the town, except so Effect of such proclamation.

(*w*) See sec. 385 *et seq.*

(*x*) There is no time limited in any year within which the application to the Lieutenant-Governor is to be made.

(*y*) The offices of reeve and deputy reeve, were necessary only as representatives of the town in the county council.

far as relates to the care of the court house and gaol, and other county property in the town ; and the town shall not thereafter be liable to the county for, or be obliged to pay to the county, or into the county treasury any money for county debts or other purposes, except such sums as may be agreed upon or awarded as aforesaid ;

New agreement or award after five years.

5. After the lapse of five years from the time of agreement or award, or such shorter time as may be stated in the agreement or award, a new agreement or a new award may be made, to ascertain the amount to be paid by the town to the county for the expenses of the administration of justice, the use of the gaol, erection and repairs of the registry office or offices, the providing of books for the same, and for services for which the county is liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands ; (*z*)

Property after withdrawal.

6. After the withdrawal of a town from the county, all property theretofore owned by the county, except roads and bridges within the town, shall remain the property of the county. 46 V. c. 18, s. 25.

Town may after five years from withdrawal pass by-law for re-union with county.

26.—(1) The council of a town which has withdrawn from a county, or union of counties, may, after the expiration of five years from the withdrawal, pass a by-law (to be assented to by the electors in manner provided for by this Act in respect of by-laws for creating debts) to re-unite with such county or union of counties. (*a*)

By-law to have no effect until ratified by council of county &c.

(2.) The by-law shall have no effect unless ratified and confirmed by the council of the county or union of counties from which the said town had previously withdrawn, within six months after the passing of the by-law, and unless the terms and conditions which the town shall pay, per-

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(*z*) Most of the services mentioned are county services, in which the town, though withdrawn from the county, must be continuously interested. But the nature and value of the services may from year to year vary ; hence provision is made for a settlement every five years, unless a shorter time be stated in the agreement or award last made.

(*a*) In some cases it has been found that the withdrawal of a town from the jurisdiction of the county in which situate, was not to the pecuniary advantage of the town. But until this provision there could not be a re-union without an Act of Parliament. As to by-laws for creating debts, see sec. 340 *et seq.*

form, or be subject to, have been previously agreed upon or settled in manner following, that is to say :—

(3.) Before the by-law is confirmed by the council of the county, the councils of the town and county shall determine by agreement the amounts of the debts of the town and county respectively which shall be paid or borne by the county after the re-union, or what amount shall be payable by a special rate to be imposed upon the ratepayers of the town, over and above all other county rates, and all other matters relating to property, assets, or advantages consequent upon the re-union, and as affecting the county or town respectively, and such other terms or conditions as appear just shall be settled by such agreement; and in default of such agreement being come to within three months after the passing of the by-law by the council of the town, the said matters shall be settled by arbitration, as provided by this Act. (*b*) 46 V. c. 18, s. 26.

Before by-law ratified, the amounts of the debts of town and county respectively shall be determined.

DIVISION III.—TOWNSHIPS.

Townships, how attached to other Municipalities. *Sec.* 27.
When junior Township may become a separate Corporation. *Secs.* 28, 29.
Arrangement of joint assets and debts. *Sec.* 30.
New Townships, union of. *Secs.* 31, 32.
Seniority of Townships. *Sec.* 33.
Effect of dissolution of union of Counties or united Townships in different Counties. *Sec.* 34.

27. In case a township is laid out by the Crown in territory forming no part of an incorporated county, the Lieutenant-Governor may, by proclamation, annex the township, or two or more of such townships lying adjacent to one another, to any adjacent incorporated county, and erect the same into an incorporated union of townships with some other township of such county. 46 V. c. 18, s. 27.

New township beyond limits of incorporated county may be attached to a county by proclamation.

28. When a junior township of an incorporated union of townships has 100 resident freeholders and householders on the assessment roll as last finally revised and passed, such town-

Junior township containing 100 freeholders, &c.,

(*b*) See sec. 385, *et seq.*

may be separated from union,

ship shall, upon the 1st day of January next after the passing of the proper by-law in that behalf by the county council, become separted from the union. 46 V. c. 18, s. 28.

In what case junior township containing 50 freeholders, &c., but less than 100, may be separated from union,

29.—(1) In case a junior township has at least 50, but less than 100 resident freeholders and householders on the last revised assessment roll, and two-thirds of the resident freeholders and householders of the township petition the council of the county to separate the township from the union to which it belongs, and in case the council considers the township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining township for municipal purposes, the council may, by by-law separate the same from the union; (*c*) and the by-law shall name the returning officer who is to hold, and the place for holding, the first election under the same. (*d*)

and attached to an adjoining municipality.

(2.) In case two-thirds of the resident freeholders and householders of one or more junior townships petition the council of the county to be separated from the union to which they belong, and to be attached to some other adjoining municipality, and in case the council considers that the interest and convenience of the inhabitants of the township or townships would be promoted thereby, they may, by by-law, separate the township or townships from the union, and attach the same to some other adjoining municipality. (*e*) 46 V. c. 18, s. 29.

(*c*) It is the rule to have at least 100 resident freeholders and householders on the last roll, as finally revised, in order to constitute a separate township, and to have townships of a less number of inhabitants united. Sec. 28. This sub-section creates an exemption where the geographical position makes the union inconvenient.

(*d*) A separate returning officer is a necessary consequence of a separation. For this reason the by-law which effects the separation must name the returning officer, and appoint the place for holding the first election. The preceding section fixes a time for the separation, but by this section the time seems to be left to the determination of the council.

(*e*) This sub-section provides for detaching a township from one union, and annexing it to another township or union where the county council, upon petition, considers that the interest and convenience of the inhabitants would be thereby promoted.

30. After the dissolution of a union of townships, the following shall be the disposition of the property of the union; (*f*) Disposition of property upon dissolution of union.

1. The real property of the union situate in the junior township shall become the property of the junior township; (*g*). Real property.

2. The real property of the union situate in the remaining township or townships of the union shall be the property of the remaining township or townships; (*g*).

3. The two corporations shall be jointly interested in the other assets of the union, and the same shall be retained by the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree; (*h*) Other assets.

(*f*) As to the necessity for such provision as the following in regard to the disposition of property in the event of a division of a municipality, see cases mentioned in note *n* to sec. 13.

(*g*) The situation of the real property is made to govern its ownership. If in the junior township, it becomes the property of the junior township; if in the remaining township or townships, it becomes the property of such township or townships. This is the rule which was held to apply, by the Supreme Court of New York, to the division of a municipality, in the absence of express provision to the contrary. *North Hempstead* v. *Hempstead*, 2 Wend. 109. See further *Milwaukee* v. *Milwaukee*, 12 Wis. 93. The *situs* of real property, as between municipalities, in the event of a dissolution of the union formerly existing, in general determines its ownership. But, as regards property other than real property, a different rule in general prevails. See *Windham* v. *Portland*, 4 Mass. 384; *Hartford Bridge* v. *East Hartford*, 16 Conn. 149; *S. C.* 10 How. (U. S.) 511; *Hampshire* v. *Franklin*, 16 Mass. 75.

(*h*) The assets of the union may consist either of real or personal property, or of both. The disposition of the real property is provided for in the preceding subsections. Its *situs* determines its ownership. But as regards other assets the disposition is necessarily made to depend on the agreement of the townships, unless clothed with a trust of some kind. See *North Yarmouth* v. *Skellings*, 45 Maine 133; *Harrison* v. *Brigeton*, 16 Mass. 16; *Milwaukee* v. *Milwaukee*, 12 Wis. 93. In the case of the separation of part of a township and its erection into an incorporated village, the liability to assessment in respect of drainage, which had been done under the Ontario Drainage Act on the application of the township, but for which the assessment had not been completed, was held not a matter to be arbitrated upon as being a debt of the township to which the village ought to contribute, each corporation being bound by the Act to raise the amount assessed in respect of such drainage upon the land locally situated within it. *In re Village of Point Edward and Township of Sarnia*, 44 U. C. Q. B. 461. A by-law of the county of Oxford granted a bonus of $50,000 to the Port Dover and L. H. R. W. Co., and authorized debentures of the county

Arrangement as to property and debts.

4. The one shall pay or allow to the other, in respect of the said disposition of the real and personal property of the union, and in respect of the debts of the union, such sum or sums of money as may be just; (*i*)

How to be determined in case of disagreement.

5. In case the councils of the townships do not, within three months after the first meeting of the council of the junior township, agree as to the disposition of the personal property of the union, or as to the sum to be paid by the one to the other, or as to the times of payment thereof, the matters in dispute shall be settled by arbitration under this Act. (*j*)

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to be issued therefor, to be provided for by a rate levied on the town of Woodstock and the township of North Norwich. By 37 V. c. 57, s. 26, it was provided that the company should indemnify the township to the extent of $10,000 against any excess above two-fifths of the said debentures, and should give a bond securing such indemnity, which bond had been given. On the separation of the village of Norwich from the township of North Norwich, it was held that the liability of the township under this by-law was a debt of the township, and within the powers of the arbitrators under this section. *Re Township of North Norwich and Village of Norwich*, 44 U. C. Q. B. 34.

(*i*) *As may be just.* This has reference to more than a mere equalization of the assessment between the different municipalities. *In re Howick and Wroxeter*, 12 U. C. L. J. N. S. 64. So long as the townships remain united, they constitute one municipality, as much as the various wards of a city; but when united townships separate, there are matters which require adjustment, according to what is right and fair, between the parties. The division of the property and settlement of liabilities are in the first instance, if possible, to be determined by mutual agreement. On the separation of three townships into two municipalities, the two corporations executed an instrument whereby one agreed to pay to the other a certain sum as soon as certain non-resident rates theretofore imposed should become available. It was subsequently discovered that these rates had been illegally imposed, and that the supposed fund would never be available. Its supposed existence had been an element in determining the amount to be paid. It was held that the corporation to which the money was made payable was not entitled to have the agreement reformed so as to make the money payable by the other absolutely. *Arran* v. *Amabel*, 17 Grant 163, reversing *S. C.*, 15 Grant 701.

(*j*) So far as the Act directs a distribution of property, the Act must be followed. The corporations cannot of themselves make an arrangement contrary to the Act, but where the Act is silent as to the particular division of property or adjustment of assets, it is in the power of the corporation, by amicable arrangement or through the medium of an arbitration, to adjust the same. See *Wellington* v. *Wilmot*, 17 U. C. Q. B. 71. The duty of the arbitrators is to ascer-

6 The amount so agreed upon or settled shall bear interest from the day on which the union was dissolved ; and shall be provided for by the council of the indebted township like other debts ; (*k*) 46 V. c. 18, s. 30.

Amount settled to bear interest.

31. In case a township is laid out by the Crown in an incorporated county or union of counties, or in case there is any township therein not incorporated and not belonging to an incorporated union of townships ; the council of the county or united counties shall, by by-law, unite such townships for municipal purposes, to some adjacent incorporated township or union of townships in the same county or union of counties. (*l*) 46 V. c. 18, s. 31.

New townships, &c., within the union of incorporated counties, to be united to adjacent townships, and how.

32. In case of there being at any time in an incorporated county or union of counties two or more adjacent townships not incorporated, and not belonging to an incorporated union of townships ; and in case such adjacent townships have together not less than 100 resident freeholders and householders within the same, the council of the county or union of counties may, by by-law, form such townships into an independent union of townships. (*m*) 46 V. c. 18, s. 32.

Townships not incorporated or united may be formed into unions.

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tain the assets of the union, real and personal ; dispose of the personal property as may be just ; make proper allowance for the real estate to the township deprived of it by the separation, and for the personal property assigned to either municipality in excess of its share ; and ascertain and apportion the liabilities. They should consider the value of the real property of the union in each township as an asset and what allowance, if any, should be made by the township retaining it under the statute to the separating township. *In re the township of Albemarle, and the United Townships of Eastnor, Lindsay, and St. Edmonds.* 45 U. C. Q. B. 133.

(*k*) In the absence of an agreement to the contrary, the rate of interest would be six per cent. per annum. See sec. 2 of R. S. C. c. 127. This is also the rate of interest to be paid when a balance is found due by one county to another after a separation. See sec. 45.

(*l*) There are in some counties tracts of land not surveyed or laid out in townships, and this section requires the county council of any such county to unite new townships when laid out with some adjacent township or townships, in order that the inhabitants may at once enjoy municipal rights and be subject to municipal liabilities. See note *k* to sec. 20. This provision is made in lieu of an Act of Parliament, which would be otherwise necessary in such a case.

(*m*) Under this section unions may be formed of two or more *new* townships, instead of annexing them to *old* townships, This can only be done when the joint population of resident freeholders and householders is not less in number than 100.

Seniority of united townships, how regulated.

33. Every proclamation or by-law forming a union of townships shall designate the order of seniority of the townships so united; and the townships of the union shall be classed in the by-law according to the relative number of freeholders and householders on the last revised assessment roll; or if there be no such revised assessment roll for any of such townships, then the order of seniority shall be determined by the proclamation or by-law, as the Lieutenant-Governor or county council may think fit. 46 V. c. 18, s. 33.

Effect of dissolution of union of counties on united townships in different counties.

34. In case the united townships are in different counties the by-law shall cease to be in force whenever the union of the counties is dissolved. (*n*) 46 V. c. 18, s. 34.

DIVISION IV.—COUNTIES.

Counties, how formed. *Sec.* 35.
Seniority of United Counties. *Sec.* 36.
Laws applicable to union of counties. *Sec.* 37.

New counties how formed by proclamation, and annexed or united.

35. The Lieutenant-Governor may, by proclamation, form into a new county any new townships not within the limits of an incorporated county, and may include in the new county one or more unincorporated townships or other adjacent unorganized territory (defining the limits thereof) not being within an incorporated county, (*o*) and may annex the new county to any adjacent incorporated county; (*p*) or in case

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(*n*) No case can arise under this section, unless the union has been made by the council of united counties of townships in different counties of the union. When this has been done, and the counties afterwards become separated, provision is made for the separation of the united townships. The fact that the by-law is in such an event to "cease to be in force," restores the townships to the situation, as near as may be, in which they were before the by-law passed.

(*o*) The provisions of this section were originally taken from sec. 35 of Con. Stat. U. C. cap. 54. They facilitate the formation of counties and unions of counties in newly organized tracts of land, without the necessity of legislative intervention.

(*p*) In the event of annexation, it is presumed that the inhabitants of the part annexed would become subject to the liabilities, if any, of the county to which annexed. See *Powers* v. *Wood County*, 8 Ohio St. 285; *Layton* v. *New Orleans*, 12 La. An. 515; *Arnoult* v. *New Orleans*, 11 La. An. 54; *Gorham* v. *Springfield*, 21 Maine 58; *St. Louis*

there is no adjacent incorporated county, or in case the Lieutenant-Governor in Council considers the new county, or any number of such new counties lying adjacent to one another, and not belonging to any incorporated union, so situated that the inhabitants cannot conveniently be united with the inhabitants of an adjoining incorporated county for municipal purposes, the Lieutenant-Governor may, by the proclamation, erect the new county, or new adjacent counties, into an independent county or union of counties for the said purposes, and the proclamation shall name the new county or counties. (*q*) 46 V. c. 18, s. 35.

Seniority of united counties, how regulated.

36. In every union of counties, the county in which the county court house and gaol are situate shall be the senior county, and the other county or counties of the union shall be the junior county or counties thereof. (*r*) 46 V. c. 18, s. 36.

Laws applicable to union of counties.

37. During the union of counties, all laws applicable to counties (except as to representation in Parliament or the Legislative Assembly and registration of titles) shall apply to the union as if the same formed but one county. (*s*) 46 V. c. 18, s. 37.

DIVISION V.—PROVISIONAL COUNTY CORPORATIONS.

Provisional Corporations, formed by separation of Junior County. *Sec.* 38.
Provisional officers. *Secs.* 39, 40.
Property may be acquired on which to erect Gaol and Court House. *Sec.* 41.
Powers of Provisional Council not to interfere with United Corporation. *Sec.* 42.

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v. *Allen*, 13 Mo. 400; *Railroad Co.* v. *Spearman*, 12 Iowa 112; *Wade* v. *Richmond*, 18 Gratt. (Va.) 583; *Norris* v. *Mayor &c.*, 1 Swan (Tenn.) 164; *Elston* v. *Crawfordsville*, 20 Ind. 272; *Girard* v. *Philadelphia*, 7 Wall. 1; *Blanchard* v. *Bissell*, 11 Ohio St. 96; *Reg.* v. *Local Government Board*, L. R. 8 Q. B. 227.

(*q*) See note *e* to sec. 5.

(*r*) There is not only seniority among united townships, but seniority among united counties. While, among the former, seniority as a rule is to be determined by population, (sec. 33), among the latter, it is to be determined by the situation of the court house and gaol.

(*s*) Improvements, however, may, under certain circumstances, be made by either county separately. See secs. 515 *et seq.*

Arrangement of joint assets and liabilities. *Secs.* 43-45.
Appointment of officials. *Sec.* 46.
Separation, when complete. *Secs.* 47, 48.
Effect of separation on judicial proceedings. *Secs.* 49-52.

Separation of united counties.

38. Where the census returns taken under a statute, or under the authority of a by-law of the council of any united counties, shew that the junior county of the union contains 17,000 inhabitants or more, then if a majority of the reeves and deputy reeves of such county do, in the month of February, pass a resolution affirming the expediency of the county being separated from the union; and if, in the month of February in the following year, a majority of the reeves and deputy reeves transmit to the Lieutenant-Governor in Council a petition for the separation, and if the Lieutenant-Governor deems the circumstances of the junior county such as to call for a separate establishment of Courts and other county institutions, he may, by proclamation setting forth those facts, constitute the reeves and deputy reeves in that county a provisional council, and in the proclamation appoint a time and place for the first meeting of the council, and therein name one of its members to preside at the meeting, and also therein determine the place for and the name of the county town. (*t*) 46 V. c. 18, s. 38.

Appointment by proclamation of provisional council in junior county.

First meeting thereof.

County town

Who to preside.

39. The member so appointed shall preside in the council until a provisional warden has been elected by the council from among the members thereof. (*u*) 46 V. c. 18, s. 39.

Appointment of provisional warden and other officers.

Terms of office.

40. Every provisional council shall from time to time by by-law appoint a provisional warden, a provisional treasurer and such other provisional officers for the county as the council deems necessary. The provisional warden shall hold office for the municipal year for which he is elected, and

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(*t*) The provisions of this section are designed to prevent the necessity of special legislation. The reeves and deputy reeves of the several municipalities within the junior county are *ex officio* members of the provisional council. Sec. 72.

(*u*) The new council demands the appointment of a new presiding officer. The proper officer to preside over a county council is the warden. But temporary provision is needed for the appointment of an officer to preside at the election of warden. The next section provides for the election of warden and other provisional officers.

the treasurer (*v*) and other officers so appointed shall hold office until removed by the council. 46 V. c. 18, s. 40.

Provisional council may acquire land and erect thereon gaol and court house.

41. Every provisional council may acquire the necessary property at the county town of the junior county on which to erect a court house and gaol, and may erect a court house and gaol thereon, adapted to the wants of the county, and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass by-laws for such purposes. (*w*) 46 V. c. 18, s. 41.

Respective powers of provisional council and council of union.

42. The powers of a provisional council shall not interfere with the powers of the council of the union, and any money raised by the provisional council in the junior county shall be independent of the money raised therein by the council of the union. (*x*) 46 V. c. 18, s. 42.

Agreement upon dissolution as to joint liabilities and joint assets.

43. After a provisional council has procured the necessary property, and erected thereon the proper buildings for a court house and gaol, such council, and the council of the senior or remaining counties, may enter into an agreement for the settlement of their joint liabilities and the disposition of their joint assets (other than real estate), and for determining the balance or amount that may be due by the one county to the other, and the times of payment thereof; and in determining the balance the senior or remaining counties shall assume the debts of the union, and the junior county be charged with such part thereof as may be just, and the value of the real estate, which, upon the separation, becomes

Senior county to assume debts of union.

Junior county to be charged with just proportion.

(*v*) The obligation of a provisional treasurer or his sureties would not appear to extend beyond the duration of the existence of the provisional council whose moneys he is to receive and for which he is to account. *Ontario* v. *Paxton*, 27 U. C. C. P. 104.

(*w*) These powers should be exercised by by-law, and are confined to the aquisition of such property as may be *necessary* for the purposes mentioned. See *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *State Bank* v. *Brackenridge*, 7 Blackf. (Ind.) 395. As to construction and repairs of gaols and court houses. See R. S. O. c. 250, ss. 22, 26.

(*x*) Each council is intended to govern a different body of ratepayers. It is only right, therefore, that the powers of the one should not needlessly interfere with the powers of the other. But until the provisional council becomes a permanent council, the ratepayers of the provisional county must, for some purposes, remain subject to the powers of the council of the union. Money, however, raised by the provisional council is declared by this section to be independent of the money raised therein by the council of the union.

the property of the senior or junior county respectively, and any improvement effected by the union which either county gets the exclusive benefit of, shall also be taken into account. (*y*). 46 V. c. 18, s. 43.

When provisional councillors shall not vote.

44. No member of the provisional council shall vote or take part in the council of the union on any question affecting such agreement, or the negotiation therefor. (*z*) 46 V. c. 18, s. 44.

In case of disagreement, disputes to be determined by arbitration.

Payment of amounts found due.

45. In case the councils, within one month after the period mentioned in section 43, are unable to determine by agreement the several matters hereinbefore mentioned with respect to their debts, assets and property, such matters shall be settled between them by arbitration under this Act, (*a*) and the county found liable shall pay to the other county the balance or amount agreed or settled to be due by such county, and such amount shall bear interest at six per centum per annum from the day on which the union is dissolved, and shall be provided for, like other debts, by the council of the county liable therefor after separation. (*b*) 46 V. c. 18, s. 45.

Appointment of sheriff and other officials.

46. After the sum, if any, to be paid by the junior county to the senior or remaining county or counties has been paid or ascertained by agreement or arbitration, a Judge may be appointed as provided by *The British North America Act, 1867*, and the Lieutenant-Governor, or the Lieutenant-

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(*y*) It is necessary that the gaol and court house should be erected before an agreement respecting the debts of the union is entered into, and then, and not till then, the county about to be separated is to arrange with the remaining county or counties for a due proportion of the joint debts. See sec. 30 and notes thereto. In case the councils do not agree as to the amount or periods of payment, they are to arbitrate. See sec. 385, *et seq.*

(*z*) The reason of the prohibition is plain. Though the members of the provisional council are also members of the council of the union, yet in this negotiation the matter lies between the provisional council on the one hand, and the council of the union on the other. And the provisional council being for this purpose an independent and interested body, it follows that the interest of the union, which is virtually the interest of the senior or remaining county or counties, should be protected by the councillors of the senior or remaining county or counties.

(*a*) See sec. 385 *et seq.*

(*b*) The rate of interest is here named, and not left to inference, as under sec. 30, sub-sec. 6, in the case of the separation of united townships.

Governor in Council, as the case may be, shall appoint a sheriff, one or more coroners, a clerk of the peace, a clerk of the County Court, a registrar, and at least twelve Justices of the Peace, (*c*) and shall provide, in the commission or commissions, that the appointments are to take effect on the day the counties become disunited. 46 V. c. 18, s. 46.

Final separation of united counties by proclamation.

47. After such appointments are made, the Lieutenant-Governor shall, by proclamation, separate the junior county from the senior or remaining county or counties, and shall declare such separation to take effect on the 1st day of January next after the end of three months from the date of the proclamation; and on that day the Courts and officers of the union (including Justices of the Peace) shall cease to have any jurisdiction in the junior county; (*d*) and the real property of the corporation of the union situate in the junior county shall become the property of the corporation of the junior county, and the real property situate in the remaining county or united counties shall be the property of the corporation of the remaining county or united

Property, how divided.

(*c*) Judges are appointed under the B. N. A. Act by the Government of Canada. The other officials mentioned, as also, Police Magistrates, are appointed by the Provincial Government. *Reg.* v. *Bush*, 24 U. C. L. J. N. S. 188.

(*d*) A commission granted to a person to take recognizances of bail, &c., within the Gore District, was held not to empower him to take recognizances of bail in the county of Brant after its separation from the Gore District. *Carter* v. *Sullivan*, 4 U. C. C. P. 298. But where the commission was granted for the Midland District, which included the county of Prince Edward and the united counties of Frontenac, Lennox and Addington, it was held that the commissioner resident in Frontenac, Lennox and Addington, after the separation of Prince Edward, had authority still to administer affidavits, as in the united counties. *McWhirter* v. *Corbett*, 4 U. C. C. P. 203. See also *Glick* v. *Davidson*, 15 U. C. Q. B. 591; *Fleming* v. *McNaughton*, 16 U. C. Q. B. 194. It has been held that before the passing of 32 Vict. c. 36, sec. 132, sub-sec. 2, Ont., the treasurer of the senior county had no power to sell lands situate in the junior county for arrears of taxes due to the union before the separation. *Canada P. Building Society* v. *Agnew*, 23 U. C. C. P. 200. By Imp. Stat. 2 & 3 Will. IV. c. 64, Sch. O. 30, Clifton was made part of the Parliamentary Borough of Bristol, which is a county in itself. Except so far as that Act operated, Clifton was in the county of Gloucester, *Held*, that after the passing of the Municipal Corporations Act, 5 & 6 Will. IV. c. 76, secs. 7, 8, the Gloucester Justices had no longer the power to make an order diverting a footway in Clifton. *Rex* v. *Justices of Gloucestershire*, 4 A. & E. 680. See further *The People* v. *Morell*, 21 Wend. 563; *The State* v. *Hartshorn*, 17 Ohio 135; *The State* v. *Jacobs*, *Ib.* 143.

counties; (*e*) and the other assets, belonging to the corporation of the union, shall belong to and be the property of the senior or junior county, or union of counties respectively, as agreed upon at the separation; (*f*) and, if not otherwise disposed of by agreement or arbitration, they shall belong to and be the property of the senior county, or union of counties; (*g*) and in the case of choses in action, they may be recovered in an action, or other proceeding instituted or commenced in the name of the senior county or union of counties. (*h*) 46 V. c. 18, s. 47.

Officers and property, &c., continued.

48—(1) When a junior county is separated from a union of counties, the head and members of the provisional council of the junior county, and the officers, by-laws, contracts, property, assets and liabilities of the provisional corporation, shall be the head and members of the council, and the officers, by-laws, contracts, property, assets, and liabilities of the new corporation. (*i*) 46 V. c. 18, s. 48.

Delivery of books to Treasurer.

(2) The treasurer of the senior county shall upon being requested so to do, deliver to the treasurer of the new county the books relating to the municipalities within the new county required to be kept under section 162 of *The Assessment Act*. 51 V. c. 28, s. 3.

Execution and service of process in hands of sheriff at time of separation.

49—(1) The dissolution of a union of counties shall not prevent the sheriff of any senior county from proceeding upon and completing the execution or service within the junior county of any writ of mesne or final process in his hands at the time of such separation, or of any renewal thereof, or of any subsequent or supplementary writ in the same

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(*e*) See note *g* to sec. 30.

(*f*) See note *h* to sec. 30.

(*g*) See note *j* to sec. 30.

(*h*) A chose in action formerly was not assignable so as to give a right to the assignee to sue in a Court of Law. But the rule was different in Courts of Equity. See now Rev. Stat. c. 122, s. 6, *et seq*.

(*i*) The reeves and deputy reeves of a junior county may, under sec. 38, be constituted a provisional council, with power, under sec. 40, to appoint provisional officers, and, under sec. 47, such junior county may, be separated from the union. It is enacted by this section that the head and members of the provisional council of the junior county, and the officers, &c., of the provisional corporation, shall be the head, &c., and the officers, &c., of the council and of the new corporation. See note *v* to sec. 40.

cause; or in the case of executions against lands from executing all necessary deeds and conveyances relating to the same, and the acts of all such sheriffs in that behalf shall be and be held and construed to be legal and valid in the same manner and to the same extent as if no separation had taken place, but no further. (*j*) 46 V. c. 18, s. 49.

Execution of writs.

(2) This section shall not be held to authorize the sheriff of the senior county to execute within the new county any writ which is not in his hands at the time the dissolution takes effect, unless such writ depends for its priority upon a former writ executed by such sheriff or in his hands at the said time.

Pending actions.

(3) All actions and proceedings in any Court which may be pending at the date the establishment of the new county takes effect, may be prosecuted, continued, and completed, and all writs of execution and other processes, and all acts and proceedings subsequent thereto, may, (subject to any order to the contrary being made), be taken, issued, and had in the county in which such actions and proceedings were originally commenced as fully and effectually as if the junior county had not been separated from the senior county; and subject to the provisions of the next sub-section, no writ or other process or proceeding shall lose its priority by reason of no entry thereof appearing or being in the proper office in that behalf in the new county; and all officers who would have had power or authority to execute such writ, process or proceedings, if the new county had not been formed, shall, for the purpose of all pending suits, actions and proceedings, have the same power and authority in respect of the same as if the dissolution had not taken place.

Continuation of writs in hands of sheriff at time of dissolution.

(4) No unsatisfied writ against lands or goods in the hands of the sheriff of the union on the day the dissolution takes effect shall bind lands or goods situate within the limits of the new county, or have any effect upon such lands or goods after one year from the said day, unless the person entitled to the benefit of such unsatisfied writ, before the expiration of the said year shall have placed a writ against lands or goods (as the case may require) in the hands of the sheriff of the

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(*j*) This section is intended to prevent difficulties such as presented themselves in *Ross* v. *Farewell*, 5 U. C. C. P. 101. See also Rev. Stat. c. 16, s. 44. As to the steps to be taken to preserve priority as respects goods and lands in the new county. See sub-sec. 4 of this section.

new county, indorsed with a notice that priority is claimed by virtue of this Act, in which case his writ in the hands of the sheriff of the senior county, if it, at the said time, did bind lands or goods within the territory included in the new county, shall continue to bind such lands or goods and shall retain its priority so long as such indorsed writ remains in force; provided such person shall not in the meantime have permitted his writ in the hands of the sheriff of the senior county to expire, or shall not have otherwise lost his priority.

Division Courts.

(5) The Lieutenant-Governor may, in the proclamation establishing the new county, or in a subsequent proclamation, fix and determine the number, limits and extent of the Division Courts for the new county, to take effect from a day to be named, subject to be thereafter altered under the provisions of *The Division Courts' Act*, (*k*) and may by such proclamation direct that suits and proceedings which at the said day are pending or being in any Division Court therein specified, shall become suits or proceedings of any other Division Court therein specified, and thereupon such suits or proceedings may be continued in such last mentioned Court as if they had been commenced therein.

Chattel mortgages.

(6) All chattel mortgages relating to property within any of the townships, cities, towns or incorporated villages forming the new county, at the date the proclamation takes effect, shall until their renewal becomes necessary to maintain their force against creditors (*l*) continue to be as valid and effectual in all respects as they would have been if the new county had not been formed, but in the event of a renewal of any such chattel mortgage after the date the proclamation takes effect, the renewal shall be filed in the proper office in that behalf in the new county as if the mortgage had originally been filed therein, together with a certified copy under the hand of the clerk and seal of the County Court, and no chattel mortgage in force at the said date shall lose its priority by reason of its not being filed in the new county prior to its renewal. 51 V. c. 28, s. 4.

Change of place of trial in actions, &c., after separation.

50. If upon a dissolution of a union of counties, there is pending an action, or other civil proceeding in which the county town of the union has been named as the place of

(*k*) See Rev. Stat. c. 51, secs, 13, 15.

(*l*) See Rev. Stat. c. 125, sec. 11, *et seq.*

trial, the court in which the action or proceeding is pending, or any Judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the place of trial to be changed, and all records and papers to be transmitted to the proper officers of the new county. (*m*) 46 V. c. 18, s. 50.

51. In case no such change is directed, all such actions and other civil proceedings shall be carried on and tried in the senior county. (*n*) 46 V. c. 18, s. 51. If no order made where proceedings to be carried on.

52. All Courts of the junior county required to be held at a place certain, shall be held in the county town of the junior county. (*o*) 46 V. c. 18, s. 52. Place for holding courts in junior county.

Division VI.—Matters Consequent upon the Formation of New Corporations.

By-laws to continue in force. *Secs.* 53, 54.
Debts and Liabilities, how affected. *Secs.* 55–59.
Officials and their Sureties, how affected. *Secs.* 60–63.

53. In case a village is incorporated, or village or town (with or without additional area) erected into a town or city, or a township or county becomes separated, the by-laws in force therein respectively shall continue in force until repealed or altered by the council of the new corporation ; (*p*) By-laws in force prior to formation of new corporation to continue in force until altered by

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(*m*) The dissolution should not affect pending proceedings. But where it is for the convenience of the parties that the place of trial should be changed to the new county, a discretionary power to order the change is vested in the Court or a Judge. The change may be by consent or without consent, on a proper case shewn by affidavit.

(*n*) The senior county is that in which the court house and gaol, &c., are situate. Sec. 36.

(*o*) Such as Assizes, Quarter Sessions, County Courts, and Surrogate Courts.

(*p*) The effect of this section is to continue existing by-laws of the union in both the senior and junior counties and townships respectively, after a separation, subject to the powers of each independent council to repeal or alter the same when the council of the union might have done so. The council of a municipality has, in general, power to repeal a by-law without reference to the people. *Rex* v. *Ashwell*, 12 East 22 ; *Rex* v. *Bird*, 13 East 367 ; *Great Western R. W. Co. and North Cayuga*, 23 U. C. C. P. 28 ; *Bloomer* v. *Stolley*,

council of new corporation.

but no such by-laws shall be repealed or altered unless they could have been or can be legally repealed or altered by the council which passed the same. (*q*) 46 V. c. 18, s. 53.

What by-laws bind where limits of a municipality are extended.

54. In case an addition is made to the limits of any municipality, the by-laws of such municipality shall extend to the additional limits, and the by-laws of the municipality from which the same has been detached shall cease to apply to the addition, (*r*) except only by-laws relating to roads and streets, and these shall remain in force until repealed by by-laws of the municipality to which the addition has been made. (*s*) 46 V. c. 18, s. 54.

Liability for debts at the time of dissolution.

55. In the case of the erection of a locality into an incorporated village, or of a village into a town, or of a town into a city, the village, town, or city shall remain subject to the debts and liabilities to which the locality was previously liable, in like manner as if the same had been contracted or incurred by the new municipality; (*t*) and, after

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5 McLean 158; *Santo* v. *State of Iowa*, 2 Iowa 165; *Bank of Chenango* v. *Brown*, 26 N. Y. 467; *Magee* v. *State*, 4 Ind. 362; *Rice* v. *Foster*, 4 Harring. (Del.) 479; *The People* v. *Collins*, 3 Mich. 347. See also sec. 283.

(*q*) The council of a village incorporated and separated from a township in which at the time of the incorporation, a by-law existed prohibiting the sale of intoxicating liquors in shops and places other than houses of public entertainment within the township, was held not to have power by by-law not submitted for approval of the electors of the village, to repeal the prohibitory by-law as far as it affected the village. *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.

(*r*) The object of this section is to extend the existing by-laws of a municipality to land added thereto after the passing of the by-laws, and to indicate the exemption of such lands from the operation of the by-laws of the municipality to which they formerly belonged. Even the operation of the by-laws of the old municipality creating debts, &c., are thus in effect got rid of; but by-laws relating to roads or streets, within the limits of such tracts, are, for obvious reasons, continued until repealed by the council acquiring jurisdiction over the same. But see sec. 56.

(*s*) See *Reg.* v. *Inhabitants of New Sarum*, 7 Q. B. 941; *Reg.* v. *Birmingham*, 10 Q. B. 116; *Reg.* v. *New Windsor*. 1 Q. B. D. 152.

(*t*) This strengthens the provisions contained in the previous section for the protection of creditors. The effect of this section is that a village newly incorporated remain liable to pre-existing township debts, and towns and cities respectively remain liable for the debts contracted by them while they were villages or towns. The same principle is also, by this section, made applicable to townships separating from a union. See further note *n* to sec. 13.

the separation of a county or township from a union, each county or township which formed the union shall remain subject to the debts and liabilities of the union, as if the same had been contracted or incurred by the respective counties or townships of the union after the dissolution thereof. (*u*) 46 V. c. 18, s. 55.

Adjustment of debts when limits extended.

56. After an addition has been made to a village, town, or city, by the annexation of an adjoining village or town or adjoining portion of a township, the city, town or village whose limits shall have been so extended, shall pay to the township or county from which the additional territory has been taken, such part (if any) of the debts of the township or county as may be just, and shall be entitled to receive from and be paid by the township or county the value of the interest which the added territory had at the time of making such addition in the property or assets of the township or county; (*v*) and in case the councils do not, within three months after the first meeting of the council of the municipality to which the addition has been made, agree as to the sum to be paid or received as aforesaid, or as to the time of payment, the matter shall be settled by arbitration under this Act. (*w*) 48 V. c. 39, s. 2.

Debentures to be issued for debts, and to bind the old and new municipalities.

57. After the formation of a new corporation by the dissolution of a union of counties or townships, the council of the senior or remaining county or township shall issue

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(*u*) The united counties of York and Peel, notwithstanding separation, were held to be jointly liable to the registrar of Peel for services rendered by him under secs. 26 and 32 of the Registry Act. *Campbell* v. *York and Peel*, 26 U. C. Q. B. 635; 27 U. C. Q. B. 138. In such case the action cannot properly be brought against one of the counties without joining the other. *Ekins* v. *Bruce*, 30 U. C. Q. B. 48. A suit properly brought against three united counties was held to be properly continued against the three, notwithstanding a dissolution of the union. *Lincoln, Welland, and Haldimand* v. *Thompson* 8 U. C. Q. B. 615.

(*v*) The effect of sec. 54 is to exempt tracts of land annexed, from the debts of the municipality to which they formerly belonged. The effect of this section read in connection with sec. 54 is to render the municipality to which the annexation is made liable to the former municipality for a reasonable proportion of the pre-existing debts. See note *n* to sec. 13. When part of a township is detached therefrom and added to a town, no power is given to the arbitrators by this section to direct the township to pay any sum to the town. *Re Sarnia*, 1 O. R. 411.

(*w*) See sec. 385 *et seq.*

its debentures or other obligations for any part of any debt contracted by the union for which debentures or other obligations might have been, but had not been, issued before the dissolution; and the debentures or obligations shall recite or state the liability of the junior county or township therefor under this Act; and the junior county or township shall be liable therefor as if the same had been issued by the union before the dissolution. (*x*) 46 V. c. 18, s. 57.

Assessments for year preceding dissolution.

58. All assessments imposed by the council of the then corporation for the year next before the year in which the new corporation is formed by separation therefrom, shall belong to the then corporation, and shall be collected and paid over accordingly, and after the separation all special rates for the payment of debts theretofore imposed upon the locality by any by-law of the former corporation shall continue to be levied by the new corporation; and the treasurer of the new corporation shall pay over the amount as received to the treasurer of the senior or remaining municipality, (*y*) and the latter shall apply the money so received in the same manner as the money raised under the same by-law in the senior or remaining municipality. (*z*) 46 V. c. 18, s. 58.

Special rates for debts continued and to be paid over by treasurer of the junior county.

(*x*) In this section there are three points to be noted: 1. That after the dissolution, the council of the remaining county or township shall issue its debentures or other obligations; but, to be effectual under this section, only "for any part of any debt contracted by the union"; 2. That such debentures, &c., shall recite or state the liability of the junior county or township therefor, under this Act; and 3. That the junior county or township shall be liable thereon as if the same had been issued by the junior county or township. See note *u* to sec. 55.

(*y*) Where part of the sinking fund for the school debt was paid by a new corporation not to the treasurer of the municipality but to the secretary-treasurer of the school board of the senior municipality by whom it was misapplied, it was held that the senior municipality might recover the amount due by the new corporation; that the payment so made did not constitute a defence, and that the sections as to arbitration in the case of the separation of an incorporated village from a township did not apply. *Elderslie* v. *Paisley*, 8 O. R. 270.

(*z*) The right to rates for the year next preceding the separation is here determined. The special rates mentioned are to be levied in each respective municipality, after separation, and collected by each respective collector, as if the by-law imposing the rates had been made after the separation by each county or township separately. The duties of the treasurers require careful attention.

If the sum paid over exceeds the just amount, the excess may be recovered.

59. In case the amount paid over as in the last preceding section provided, or paid to any creditor of the senior or remaining municipality, in respect of a liability of the former corporation, exceeds the sum which, by the agreement or award between the councils, the new corporation ought to pay, the excess may be recovered against the senior or remaining municipality. 46 V. c. 18, s. 59.

Former council and officers to exercise jurisdiction over new municipalities, etc., until new councils are organized.

60. In case a village is incorporated or a village or town is erected into a town or city, or a township or county becomes separated, the council and the members thereof having authority in the locality or municipality immediately previous to the incorporation, erection or separation shall, until the council for the corporation is organized, continue to have the same powers as before ; (*a*) and all other officers and servants of the locality or municipality shall, until dismissed, or until successors are appointed, continue in their respective offices, with the same powers, duties and liabilities as before. (*b*) 46 V. c. 18, s. 60.

Effect of separation upon public officers and their sureties.

61. The separation of a junior county or township from a union of counties or townships shall not in any case or in any manner whatever affect the office, duty, power, or responsibility of any public officer of the union who continues a public officer of the senior county or township or remaining counties or townships after such separation, or the sureties of such officer or their liability, further than by limiting such office, duty, power, responsibility, suretyship and liability to the senior county or township, or remaining counties or townships. (*c*) 46 V. c. 18, s. 61.

Further provisions as to officers and their sureties.

62. All such public officers shall, after the separation, be the officers of the senior county or township, or remaining counties or townships, as if they had originally been respect-

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(*a*) It is necessary that there should not be any period of time without a proper governing body. When the new council is organized, it supersedes the previous council; but, until such organization, the council having authority immediately previous to the change continues to have the same powers as before.

(*b*) See note (*v*) to sec. 40. See also sec 279.

(*c*) The necessity for such a provision as this is shewn by *Thompson* v. *McLean*, 17 U. C. Q. B. 495, where it was held that without such a provision the sureties of a sheriff were relieved from liability by reason of the change in the office.

ively appointed public officers for such senior county or township, or for such remaining counties or townships only. 46 V. c. 18, s. 62.

Right to require new securities not affected.

63. All sureties for such public officers shall be, and remain liable, as if they had become the sureties for such public officers in respect only of such senior county or township, or of such remaining counties or townships, and all securities which have been given shall, after the separation, be read and construed as if they had been given only for the senior or remaining county or counties, or township or townships; but nothing herein contained shall affect the right of new securities being required to be given by any sheriff or by any clerk or bailiff, or other public officer, under any statute, or otherwise howsoever. (*d*) 46 V. c. 18, s. 63.

PART II.

MUNICIPAL COUNCILS, HOW COMPOSED.

TITLE I.—THE MEMBERS.
TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

TITLE I.—THE MEMBERS.

DIV. I.—IN COUNTIES.
DIV. II.—IN CITIES.
DIV. III.—IN TOWNS.
DIV. IV.—IN INCORPORATED VILLAGES.
DIV. V.—IN TOWNSHIPS.
DIV. VI.—IN PROVISIONAL CORPORATIONS.

DIVISION I.—IN COUNTIES.

Councils. *Sec.* 64.
Certificate of Election, &c. *Secs.* 65-67.

County councils.

64. The council (*e*) of every county shall consist of the reeves and deputy reeves of the townships and villages

(*d*) This section only relates to existing securities, and so is not to be read as affecting the right to require new sureties when new sureties may in any case be properly demanded. See note *c* to sec. 61.

(*e*) The council is not the corporation, but only the governing body, and in some cases the legislative body of the corporation.

within the county, and of any towns within the county, which have not withdrawn from the jurisdiction of the council of the county, and one of the reeves or deputy reeves shall be the warden. (*f*) 46 V. c. 18, s. 64.

Certificates as to election and number of voters to be filed by reeves and deputy reeves.

65—(1) No reeve or deputy reeve shall take his seat in the county council until he has filed with the clerk of the county council a certificate of the township, village or town clerk, under his hand, and the seal of the municipal corporation, (*g*) that such reeve or deputy reeve was duly elected, and has made and subscribed the declarations of office and qualification

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(*f*) Towns, villages and townships are entitled to a certain number of reeves and deputy reeves, in proportion to their population. See secs. 69, 70, 71. The reeves and deputy reeves are the representatives of the local municipalities in the county council. The offices of reeve and mayor of a town have been held to be incompatible. *Reg. ex rel. Doran* v. *Haggart*, 1 U. C. L. J. N. S. 74.

(*g*) The clerk may reject the certificate if not in the form required. The section is imperative that no reeve, &c., shall take his seat, &c., until he has filed, &c. The certificate made necessary is the evidence of the right of the person presenting it to a seat in the county council. The county clerk is in the first instance made the judge of its legal sufficiency. But no clerk should, according to his own caprice or preference of any kind, allow certain persons with defective certificates to take their seats, and disallow other certificates quite as good. In such a case the clerk, if made a party to contested election proceedings, would, in all probability, be made to pay costs. But it does not follow that a reeve or deputy reeve, whose certificate is defective, if once admitted by the clerk to sit and vote, has not the right to do so when in truth qualified. Nor does it follow that a certificate in all respects regular entitles the reeve or deputy reeve to sit and vote in the council if not really qualified. The certificate is only evidence that what is contained in it was done. If it has not been done, or the reeve or deputy reeve had not been duly elected, the mere certificate would not give the right to sit and vote in the council. That right comes from his being the reeve or deputy reeve, and having made the required declarations. If the certificate were the essential part of his qualification, and not merely the evidence of it, then it might be held that acts done by the reeve or deputy reeve who did not possess it, or only possessed a defective one, were void. But the certificate, being merely evidence of his qualification, if it turn out that he is really qualified, it cannot be held that his acts as a member of the county council are void. Nor can they be in any way impugned on account of the imperfect certificate. The statute does not declare that the votes of any reeve or deputy reeve taking his seat without the certificate shall be void, nor say that the proceedings supported and carried by such votes shall not be binding. The section in this respect may be properly considered directory, and so construed. See *Reg. ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.

as such reeve or deputy reeve ; nor in case of a deputy reeve, until he has also filed with the clerk of the county an affirmation or declaration of the clerk or other person having the legal custody of the last revised voters' lists for the municipality which he represents, that there appear (*h*) upon such voters' list the names of at least 500 persons entitled to vote at municipal elections for the first deputy reeve elected for the municipality, and that no alteration reducing the limits of the municipality, and the number of persons on said list entitled to vote at municipal elections, below 500 for each additional deputy reeve, has taken place since the said voters list was last revised.

(2) In counting the names of voters referred to in this section and in sections 69, 70 and 71 the name of the same person shall not be counted more than once in any municipality, whether the name of such person appears upon the voters' lists only once, or more than once. 51 V. c. 28, s. 5.

Form of certificate as to election, &c.

66. The certificate in section 65 mentioned may be in the following form :—(*i*)

I, *A. B.*, of , clerk of the corporation of the township (town *or* village, *as the case may be*) of , in the county of , do hereby, under my hand and the seal of the said corporation, certify that *C. D.*, of , esquire, was duly elected reeve (*or* deputy reeve, *as the case may be*) of the said township (town *or* village, *as the case may be*), and has made and subscribed the declarations of office and qualification as such reeve (*or* deputy reeve, *as the case may be*).

Given under my hand and the seal of the said corporation of , at , in the said township (town *or* village, *as the case may be*) this day of A. D. 18

{ Seal of the Municipal Corporation. }

A. B.,
township (town *or* village) *clerk*.

46 V. c. 18, s. 66.

(*h*) See note *m* to sec. 69.

(*i*) It is to be hoped that, as the Legislature has seen fit to give a form of certificate, that the form will be closely followed. In the earlier Acts no form was given. The consequence was that a variety of forms were in use that were often incorrect. See the forms held bad in *Reg. ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.

67. The declaration in section 65 mentioned may be in the following form. (*j*) Form of declaration as to number of voters.

I, *A. B.*, of , *gentleman*, clerk of the township, (town *or* village, *as the case may be*), of , in the county of , do hereby declare and affirm as follows :

(1) That I am the person having the legal custody of the last revised voters' list for the said township (town *or* village) *as the case may be*).

(2) That there appear upon the said list the names of at least hundred (500 *for each deputy reeve*) persons entitled to vote at municipal elections in the said township (town *or* village, *as the case may be*).

(3) That no alteration reducing the limits of the said municipality, and the number of persons entitled to vote at municipal elections below hundred (500 *for each deputy reeve*), has taken place since the said list was last revised.

(4) That in counting the names of the voters on the said list, the names of the voters thereon have not, to the best of my information, knowledge or belief, been counted more than once, whether they appear upon the said list once, or more than once.

A. B

51 V. c. 28, s. 6.

Division II.—In Cities.

Councils.—Sec. 68.

68. The council (*k*) of every city shall consist of the mayor, who shall be the head thereof, and three aldermen for every ward, to be elected in accordance with the provisions of this Act. (*l*) 46 V. c. 18, s. 68. City councils.

(*j*) See note *i* to sec. 66.

(*k*) See note *e* to sec. 64.

(*l*) At one time the council of a city was composed of two aldermen and two councilmen from each ward, the latter requiring less property qualification than the former, but having equal power of voting. The office of councilman in cities no longer exists. The town of Sandwich, incorporated by special Act, (20 V. c. 94,) was held entitled to elect only three councillors in addition to a mayor and reeve, to be elected by the people. *Reg. ex rel. Arnold* v. *Wilkinson*, 5 P. R. 20.

Division III.—In Towns.

Councils.—Sec. 69.

Town councils.

69.—(1) The council of every town shall consist of the mayor who shall be the head thereof, and of three councillors for every ward where there are less than five wards, and of two councillors for each ward where there are five or more wards; and if the town has not withdrawn from the jurisdiction of the council of the county in which it lies, then a reeve shall be added, and if the town had the names of 500 persons entitled to vote at municipal elections on the last revised voters' list (*m*) then a deputy reeve shall be added, and for every 500 additional names of persons so entitled to vote on such list, there shall be elected an additional deputy reeve: Provided always that the council of every town, where there are less than five wards, may, upon a petition of not less than 100 municipal electors, pass a by-law reducing the number of councillors for each ward to two; but such by-law, before the final passing thereof, shall receive the assent of the electors of the municipality in the manner provided for in section 293 and following sections of this Act. 46 V. c. 18, s. 69 (1); 51 V. c. 28, s. 7.

Reduction of number of councillors.

(2) Any time after two annual municipal elections shall have been held, under a by-law passed as provided for under this section, the council of the municipality shall, upon the presentation to the council of a petition of not less than 100 resident municipal electors, asking the council to submit a by-law to a vote of the electors, for the repeal of the by-law so passed, in accordance with section 293 of this Act, without unnecessary delay, submit such repealing by-law to a vote of the electors of the municipality; the proceedings in regard to the submission of such by-laws, both as to enacting and repeal, shall be as provided in this Act in regard to by-laws requiring the assent of the electors. 46 V. c. 18, s. 69 (2.)

(*m*) Prior to 51 V. c. 28 the right to deputy reeves was governed by the assessment roll. If the names were fraudulently inserted on the roll, for the purpose of enabling the particular municipality to obtain a deputy reeve, it is apprehended that the roll would not be conclusive. See *Reg. ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51. 51 V. c. 28, s. 7, substitutes the voters' list for the assessment roll.

Division IV.—In Incorporated Villages.

Councils.—Sec. 70.

70. The council (*n*) of every incorporated village shall consist of one reeve, who shall be the head thereof, and four councillors, and if the village had the names of 500 persons entitled to vote at municipal elections on the last revised voters' list, (*o*) then of a reeve, deputy reeve, and three councillors, and for every additional 500 names of persons entitled to vote on such list, there shall be elected an additional deputy reeve instead of a councillor. 51 V. c. 28, s. 8. Incorporated village councils.

Division V.—In Townships.

Councils.—Sec. 71.

71. The council (*p*) of every township shall consist of a reeve, who shall be the head thereof, and four councillors, one councillor being elected for each ward where the township is divided into wards, and the reeve to be elected by a general vote; but if the township had the names of 500 persons entitled to vote at municipal elections on the last revised voters' list, (*q*) then the council shall consist of a reeve, deputy reeve, and three councillors, and for every 500 additional names of persons entitled to vote on such list, there shall be elected an additional deputy reeve instead of a councillor. 51 V. c. 28, s. 8. Township councils.

Division VI.—In Provisional Corporations.

Councils.—Sec. 72.

72. The reeves and deputy reeves of the municipalities within a junior county for which a provisional council is established, shall *ex officio* be the members of the provisional council (*r*) 46 V. c 18, s. 72. Provisional councils.

(*n*) See note *e* to sec. 64.

(*o*) See note *m* to sec. 69.

(*p*) See note *e* to sec. 64.

(*q*) See note *m* to sec. 69.

(*r*) See sec. 38 *et seq.* as to Provisional Councils.

TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

Div. I.—Qualification.
Div. II.—Disqualification.
Div. III.—Exemptions.

Division I.—Qualification.

In each Municipality. Sec. 73.
Nature of Estate to be possessed. Sec. 74.
In new Township where no Assessment Roll. Sec. 75.
Where only one qualified person for each seat. Sec. 76.

Qualification of mayors, aldermen, &c.

73.—(1) No person shall be qualified to be elected a mayor, alderman, reeve, deputy reeve, or councillor of any municipality, unless such person resides within the municipality, or within two miles thereof, (*a*) and is a natural-born or naturalized subject of Her Majesty, (*b*) and a male of the full age

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(*a*) Before this enactment it was held that a person rated on the assessment roll of a city, but at the time of an election resident in an adjoining township of the county in which the city was territorially situate, though almost in the boundary between the two municipalities, was not qualified to be elected a member of the council of the city. *Reg. ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; *Reg. ex rel. Fleming* v. *Smith*, 7 U. C. L. J. 66.

(*b*) It is to be presumed that resident and assessed inhabitants of this Province are British subjects till something is shewn to the contrary, from which it can be determined that they are aliens. *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 284. It is not sufficient for a relator to swear that certain voters are aliens, without giving particular facts to shew that they are aliens, and how aliens, as by having been born in a certain place named, out of the allegiance of the British Crown. *Ib.* A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and a year or two after his birth came to Upper Canada, and ever since resided here, held to be a British subject within the meaning of the Act. *Reg. ex rel. McVean* v. *Graham*, 7 U. C. L. J. 125. But a person born in the United States before the Revolution, who continued to reside there afterwards, was held to be an alien. *Doe d. Patterson* v. *Davis*, 5 O. S. 494. The son of a British subject who was married to an alien residing out of British possessions at the time of his birth, was held to be an alien. *Doe Robinson* v. *Clarke*, 1 U. C. Q. B. 37. But the son of an alien once naturalized continues a British subject notwithstanding the residence of his father beyond British allegiance. *Doe d. Hay* v. *Hunt*, 11 U. C. Q. B. 367. See further, *Montgomery* v. *Graham*, 31 U. C. Q. B. 57. A voter born in the United States, his parents being British-born subjects, his father and grandfather U. E. Loyalists, and himself nearly all his life resident in Canada: *Held*, entitled to vote. *The*

of twenty-one years, (*c*) and is not disqualified under this Act, (*d*) and has, or whose wife has, (*e*) at the time of the election, as proprietor or tenant, (*f*) a legal or equitable

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Stormont Case, 1 H. E. C. 21. An alien who came to Canada in 1850, and had taken the oath of allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter Sessions was held not qualified to vote. *Brockville Election*, *Ib.*, 129. An alien whose father had taken the oath of allegiance on obtaining the patent for his land under 9 Geo. 4, c. 21, was held not qualified to vote. *Ib.* The evidence that the parents of a voter had stated to him that he was born in the United States, but that his father was born in Canada received and the vote held good. *Ib.* When evidence was given of parol admissions by certain voters that they had been born in a foreign country, and also evidence that since the admissions the voters had voted at parliamentary elections, and had taken the voters' oath as to being British subjects by birth or naturalization: *Held*, that there was no presumption of naturalization sufficiently strong to rebut the presumption of the continuance of the original status of alienage. *Lincoln Election*, 1 H. E. C. 500. Certain aliens had taken the oath of allegiance, &c., before a Justice of the Peace of a town, which oaths were administered to them in a township, but in the same county: *Held*, that under the Alien Act, 34 Vict. c. 22, sec. 2, the Justice of the Peace in administering the oaths was acting ministerially and not judicially, and that the oaths were properly administered. *Ib.* Indians being British subjects may be either electors or candidates for municipal office. *Reg. ex rel. Gibb* v. *White*, 5 P. R. 315.

(*c*) See note *b* to sec. 79.

(*d*) See sec. 77.

(*e*) The language of this section has been changed to meet the decision in *Reg. ex rel. Felitz* v. *Howland*, 11 P. R. 264.

(*f*) B. and A. were partners, occupying premises as co-tenants under a yearly tenancy on the terms of an expired lease. Before the nomination day they dissolved partnership, B. withdrawing from the business and premises and leaving A. in possession. A. shortly afterwards went into partnership with S. The new firm then took a fresh lease of the premises: *Held*, that B. was not at the time of the election the co-tenant of A., so as to entitle him to become a candidate for alderman. *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204. A person having the mere possession of land vested in the Crown, determinable at any moment, was held not to have such an interest in the land either as proprietor or tenant, as enabled him to qualify under this section. *Reg. ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. There can be no qualification on personal property. *Reg. ex rel. Fluett* v. *Semandie*, 5 P. R. 19. Nor can the assessment on realty be supplemented by the assessment on personalty. *Ib.* A landlord is sufficiently possessed where his tenant is assessed. *Reg. ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. 36. So a landlord may put together properties, some occupied by his tenant and some by himself, to make up the assessed value required by the statute. *Reg. ex rel. Dexter* v. *Gowan*, 1 P. R. 104.

See section 270 as to declaration of office.

freehold or leasehold, or partly freehold and partly leasehold, or partly legal and partly equitable, (*g*) rated in his own name, or in the name of his wife, on the last revised assessment roll of the municipality, (*h*) to at least the value following, over and above all charges, liens and encumbrances affecting the same:

(*g*) The qualification may be of an estate legal or equitable. The estate, whethe legal or equitable, need not be free from all encumbrances. If encumbered, and after deducting the gross amount of the encumbrances from the assessed value of the premises, there be still left a sufficient value in respect of which to qualify, the qualification, notwithstanding the encumbrances, is sufficient. *Regina ex rel. Blakeley* v. *Canavan*, 1 U. C. L. J. N. S. 188. Where defendant, in November, 1858 conveyed the estate, which formed the subject matter of his qualification, to his father for a consideration of £300, for which he took notes, and in February, 1860, purchased the property back, returning all the notes, though the father did not re-convey the property till the 3rd October, 1860; yet the son was held to have had at the time of the assessment an equitable estate within the meaning of the Act. *Reg. ex rel. Tilt* v. *Cheyne*, 7 U. C. L. J. 99. See further *Rolleston* v. *Cope*, L. R. 6 C. P. 292; *Simey* v. *Marshall*, L. R. 8 C. P. 269; *Heelis* v. *Blain*, 18 C. B. N. S. 90; *Webster* v. *Overseers of Ashton-under-Lyne, Orme's Case*, L. R. 8 C. P. 281; *Hadfield's Case*, *Ib.* 306; *Middleton* v. *Simpson*, 5 C. P. D. 183.

(*h*) Formerly the property qualification and the rating were necessary under the section. *Reg. ex rel. Metcalf* v. *Smart*, 10 U. C. Q. B. 89, but this is modified by sub-section 2 of this section added thereto by 51 Viet. c. 28, sec. 9. "Where land is assessed against both the owner and occupant, or owner and tenant, the assessor shall place both names within brackets on the roll, and shall write opposite the name of the owner the letter "F." and opposite the name of the occupant or tenant the letter "T;" and both names shall be numbered on the roll. Rev. Stat. c. 193, s. 20. The omission to number both names on the roll, however, does not invalidate the assessment. See *Regina ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. The rating should be by name on the roll. *Reg. ex rel. Metcalf* v. *Smart*, 2 C. L. Chamb. 114; but see *Reg. ex rel. Laughton* v. *Baby*, *Ib.* 130. Where on the assessment roll, under the general heading, "Names of taxable parties," were entered the names of "Ker, William and Henry," for two separate parcels of land, and in the proper columns were the letters "F." and "H.," and in the column headed "Owners and address," was entered opposite to the parcels of land, "Wm. Ker & Bros.;" *Held*, that "William Ker & Henry Ker," and not "William Ker & Brothers," were the persons in whose names the properties were rated, and that they were sufficiently rated. *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67. See, however, *Applegarth* v. *Graham*, 7 U. C. C. P. 171, and *Little* v. *Overseers of Penrith*, L. R. 8 C. P. 259. Judges are in general disposed to go as far as the facts will allow for the purpose of reconciling the mode of rating with the facts, if the person elected

1. In incorporated villages—Freehold to $200, or lease- In villages;
hold to $400;

2. In towns—Freehold to $600, or leasehold to $1,200; In towns;

3. In cities—Freehold to $1,000, or leasehold to $2,000; In cities;

4. In townships—Freehold to $400, or leasehold to $800; In townships;

And so in the same proportions in all municipalities, in case the property is partly freehold and partly leasehold; (*i*)

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has really a legal qualification. *Reg. ex rel. Northwood* v. *Askin*, 7 U. C. L. J. 130; *Reg. ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214; *Reg. ex rel. Chambers* v. *Alison*, *Ib.* 244; *The Oldham Case*, 1 O'M. & H. 153. See further note *d* to sec. 79. A candidate for the office of councillor was nominated on Oct. 23, 1877, who was not enrolled on the burgess roll for the year beginning Nov. 1, 1876, but was enrolled for the year beginning Nov. 1, 1877, when the election was held and was in all other respects qualified to be elected councillor: *Held*, that he was rightly nominated. *Budge* v. *Andrews*, 3 C. P. D. 510. The defendant was not assessed for the year 1880, but in that year was assessed, on the 3rd of September, for the year 1881. By by-law of the city of Ottawa this assessment was revised before 15th Nov. and returned before 31st Dec. as and for the assessment roll for 1881. No appeal was had therefrom. The nomination took place on 27th December, 1880, and the defendant was elected Mayor of Ottawa on 4th January, 1881: *Held*, that the election commenced on the nomination day; and the assessment roll mentioned, which was to take effect in 1881, and not before, was not the last revised assessment at that time within the meaning of the by-law and R. S. O. c. 180, sec. 44 (now Rev. Stat. c. 193, sec. 52) and the defendant could not qualify thereon. *Reg. ex rel. Clancy* v. *McIntosh*, 46 U. C. Q. B. 98. Where a person elected as alderman of a city made a declaration of office, inadvertently qualifying upon property in respect of which he was not entitled to qualify, but was qualified in respect of other property, his election was sustained. *Reg. ex rel. Hartrey* v. *Dickey*, 1 U. C. L. J. N. S. 190. Property owned by a candidate, but not mentioned on the assessment roll, cannot be made available. *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278. An administrator, though rated in his own name for real estate belonging to the deceased, is not entitled to qualify upon such real estate. *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128. But the assessment roll is conclusive as to the rating, and no enquiry can be allowed outside it as to whether the candidate had more real property than that which appeared on it. *Reg. ex rel. Fluett* v. *Semandie*, 5 P. R. 19. See also *Reg. ex rel. Hamilton* v. *Piper*, 8 P. R. 225. In the case of electors there is an express declaration to that effect. See sec. 79. The amount of property rated on the roll is so far conclusive, that encumbrances cannot be taken into consideration to reduce it. *Reg. ex rel. Flater* v. *Van Velsor*, 5 P. R. 319; *Reg. ex rel. Philbrick* v. *Smart*, *Ib.* 323. See further, *Reg. ex rel. Bole* v. *McLean*, 6 P. R. 249; *Reg. ex rel. Kelly* v. *Ion*, 8 P. R. 432.

(*i*) See sec. 74.

But, if within any municipality any such person is at the time of election in actual occupation of any such freehold, rated in his own name or in the name of his wife, on the last revised assessment roll of the said municipality, he will be entitled to be elected, if the value at which such freehold is actually rated in said assessment roll amounts to not less than $2,000, and for that purpose the said value shall not be affected or reduced by any lien, encumbrance or charge existing on or affecting such freehold. 50 V. c. 29, s. 2.

When alianation of property rated not to disqualify.

(2) No person who has, or whose wife has, property duly rated on the last revised assessment roll, sufficient to qualify him, as in the last preceding sub-section required, shall be deemed to be disqualified by the alienation, by sale or otherwise, of the said property between the date of the return of the assessment roll and the time of his election, provided that at the time of his election such person is resident within the municipality and has, or his wife has, as proprietor or tenant, a legal or equitable freehold or leasehold, or partly freehold and partly leasehold, or partly legal and partly equitable estate of sufficient assessed value to qualify him for election under the preceding sub-section.

(3) In the case of the election of a person qualified under the preceding sub-section, the oath of office under sub-section 2 of section 270 of this Act may be taken, striking out all the words thereof after the word "occupation" in the thirteenth line of the said sub-section, and inserting in lieu thereof the words, "and I had such an estate actually rated on the last revised assessment roll of this township (naming it) at an amount not less than $2,000." 51 V. c. 28, s. 9.

"Leasehold" defined.

Nature of estate.

74. The term "leasehold" in the last preceding section shall not include a term less than a tenancy for a year, (*j*) or from year to year; and the qualifications of all persons, where a qualification is required under this Act, may be of an estate either legal or equitable, or may be composed partly of each. (*k*) 46 V. c. 18, s. 74.

(*j*) A person having the mere possession of a Crown lot, determinable at any moment, though rightly assessed under the Assessment Act, has no such estate in the land as will qualify him for office. *Reg. ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. See further *Mayhew* v. *Suttle* 4 E. & B. 347, 357; *White* v. *Bayley*, 10 C. B. N. S. 227.

(*k*) See note *y* to sec. 73.

75. In case of a new township erected by proclamation, for which there has been no assessment roll, every person who, at the time of the first election, has such an interest in real property, and to such an amount as hereinbefore mentioned, shall be deemed to be possessed of a sufficient property qualification. (*l*) 46 V. c. 18, s. 75. In new township not having assessment roll.

76. In case in a municipality there are not at least two persons qualified to be elected for each seat in the council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. (*m*) 46 V. c. 18, s. 76. If only one person be qualified for each seat in the council.

Division II.—Disqualification.

Persons disqualified. Sec. 77.

77.—(1) No Judge of any Court of civil jurisdiction, no gaoler or keeper of a house of correction, no sheriff, deputy sheriff, sheriff's bailiff, high bailiff or chief constable of any city or town, assessor, collector, treasurer, or clerk of any municipality, no bailiff of any Division Court, no county crown attorney, no registrar, no deputy clerk of the Persons disqualified from being members of councils.

(*l*) Both the possession of property and the rating are in general necessary to give a qualification for office under this Act. See sec. 73. But in the case of a first election in a new township, there can be no rating of property, as there is no assessment roll for such new township. In such case the property qualification, without the rating, is all that is necessary. If more were necessary, there could be no qualification at all. The person elected must put a value on the property for the purposes of the declaration required by sec. 270.

(*m*) In what manner is this section to be construed? Is it only to come into operation when the number is below two persons qualified to be elected for each seat as applied simply to qualification in respect to property, or after deducting all those who are disqualified to be elected from other causes? It is apprehended the expression, "qualified to be elected," must be construed in the larger sense, that is, for the benefit and advantage of the whole body of electors; for if it should happen that all those who might be elected as respects property were disqualified as respects interest or otherwise, the municipality could have no council if the inhabitants could not resort to the general body of electors for councillors. *Reg. ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100. For the purposes of this section the roll is not conclusive as to the "persons qualified to be elected." *Reg. ex rel. Telfer* v. *Allen*, 1 P. R. 214.

Crown, no clerk of the County Court, no clerk of the peace, (*n*) no innkeeper or saloonkeeper, or shopkeeper, licensed to sell spirituous liquors by retail, (*o*) no license commissioner or inspector of licenses, no police magistrate, and no person

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(*n*) Officers not named would, it is presumed, be qualified. All persons having the necessary qualifications are made eligible under sec. 73. The exceptions are persons by this section expressly declared to be disqualified. A local superintendent of schools was held not to be disqualified under the old law. *Reg. ex rel. Arnott* v. *Marchant*, 2 C. L. Chamb. 189. But an overseer of highways was held disqualified under the general words, "any officer of the municipality." *Reg. ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128. So the clerk of a county council. *Reg. ex rel. Boyes* v. *Detlor*, 4 P. R. 197. As to the corporation solicitor, see *Peterborough* v. *Burnham*, 12 U. C. C. P. 103. See further, *In re Sawyers* v. *Stevenson*, 5 U. C. L. J. 42. It is not in express terms declared that an insolvent shall be disqualified. See *Rex* v. *Chitty*, 5 A. & E. 609. See also sec. 177 of this Act. See further, sec. 209 *et seq.* of this Act as to other disqualifications. By the English Act 5 & 6 Will. IV. cap. 76, s. 28, no person being in holy orders, or being the regular minister of a dissenting congregation, is qualified to be a councillor of a borough. But it was held that a minister appointed to officiate occasionally or temporarily to a dissenting congregation was not disqualified. *Reg.* v. *Oldham*, 10 B. & S. 193. An Indian who is a British subject and otherwise qualified is not disqualified to hold office. *Reg. ex rel. Gibb* v. *White*, 5 P. R. 315.

(*o*) An "innkeeper" is the owner of a house who holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the accommodation required. See *Thomson* v. *Lacy*, 3 B. &. A. 283; *Dansey* v. *Richardson*, 3 E. & B. 144; *Holder* v. *Soulby*, 8 C. B. N. S. 254; *Allen* v. *Smith*, 12 C. B. N. S. 638; *Threfall* v. *Borwick*, L. R. 7 Q. B. 711. The disqualification under this section is not, however, restricted to innkeepers. It extends to all saloonkeepers and shopkeepers who are licensed to sell spirituous liquors by retail. See *Reg.* v. *Rymer*, 13 Cox. C. C. 378. A man may be an innkeeper under this section, though without a license. *Reg. ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155, and though he take out the license in the name of another. *McKay* v. *Brown*, 5 U. C. L. J. 91. An unlicensed person who under colour of a license to his son sells liquor by retail is not disqualified from holding the office of alderman. *Reg. ex rel. Clancy* v. *Conway*, 46 U. C. Q. B. 85. If a man, being an innkeeper, in good faith transfers his license, he ceases to be disqualified under the Act. *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60; see further *Dixon* v. *Birch*, L. R. 8 Ex. 135. The defendant and his brother, who were carrying on business as Booth Bros. had a license in the name of the firm to sell intoxicating liquors. Before the nomination, the defendant, with the consent of the license commissioners, transferred his interests in the license to his brother, but the business continued as before; *Held*, that a license cannot lawfully be transferred except in the cases mentioned in Rev. Stat. c. 194, s. 37, none of which had occurred here; that the

having by himself or his partner an interest in any contract with or on behalf of the corporation, (*p*) and no person who is counsel or solicitor either by himself or with or through another in the prosecution of any claim, action, or proceeding against the municipality shall be qualified to be a member of the council of any municipal corporation. 46, V. c. 18, s. 77 ; 47 V., c. 32, s. 2.

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consent of the commissioners did not validate the transfer, and, therefore, that the defendant, who retained his interest in the license, was not qualified to be a councillor. *Reg. ex rel. Brine* v. *Booth*, 3 O. R. 144. *Per* Armour, J. The disqualification should not be extended to the partner of a person lawfully holding a license in his own name. *Ib.* See *Burgess* v. *Clark*, 14 Q. B. D. 735 ; *Todd* v. *Robinson*, *Ib.* 739. The choice of a disqualified person is ineffectual. See Dillon Mun. Cor., 3rd ed., sec. 196.

(*p*) The object of this part of the section, like that of sec. 28 of the English Municipal Corporation Act 5 & 6 Will. IV. c. 76, is clearly to prevent all dealings on the part of the council with any of its members in their private capacity, or, in other words, to prevent a member of the council, who stands in the situation of a trustee for the public, from taking any share or benefit out of the trust fund, or in any contract in the making of which he, as one of the council, ought to exercise a superintendence. *Reg.* v. *Francis*, 18 Q. B. 526. The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the words. The words of our enactment are that "no person having by himself or his partner an interest in any contract with or on behalf of the corporation shall be qualified," &c. ; and the words of the English Act are that " no person shall be qualified, &c., who shall have, directly or indirectly, by himself or his partner, any share or interest in any contract *or employment* with, by or on behalf of such council," &c. The difference deserves to be noticed. See *Nicholson* v. *Fields*, 7 H. & N. 810 ; *Lewis* v. *Carr*, 1 Ex. D. 484. Under an old Act, of which this section is a re-enactment, it was held that a person who had executed a mortgage to the corporation, containing covenants for payment of money, was disqualified. *Reg. ex rel. Lutz* v. *Williamson*, 1 P. R. 94. It is not necessary that the contract should be a contract binding on the corporation. *Reg.* v. *Francis*, 18 Q. B. 526. Where defendant, before the election, had tendered for some painting and glazing required for the city hospital, and, his tender having been accepted, he had done a portion of the work, for which he had not been paid, but afterwards refused to execute a written contract prepared by the city solicitor, and informed the mayor of the city that he did not intend to go on with the work, he was notwithstanding held to be disqualified. *Reg. ex rel. Moore* v. *Miller*, 11 U. C. Q. B. 465. So where the person elected had tendered for the supply of wood and coal to the corporation. *Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. The trustees of a common school being about to erect a schoolhouse, one Gauthier offered to supply a certain quantity of brick for the purpose. They told him that if the town council

Proviso: as to shareholders in

(2) But no person shall be held to be disqualified from being elected a member of the council of any municipal corpora-

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would agree to pay him for the bricks, they would take them. He then said he would take payment for them by letting the amount go against his taxes in each year, with interest at eight per cent. on the whole amount unpaid. This offer was accepted, and the bricks were furnished. Gauthier was held disqualified to be a member of the council. *Reg. ex rel. Fluett* v. *Gauthier*, 5 P. R. 24. So where a member of the council, being a baker supplied bread to fulfil a gaol contract held by another person in his own name, but which was looked upon as really the contract of the former, he was held to be disqualified. *Reg. ex rel. Piddington* v. *Riddell*, 4 P. R. 80. Whether the contract is in the name of the party himself or another, is immaterial. See *Collins* v. *Swindle*, 6 Grant, 282; *City of* v. *Bowes*, 4 Grant, 489; 6 Grant, 1. A person who had *Toronto* entered into a contract with the corporation of the city of Dublin, was held disqualified, even though he had, before the election (but without the privity of the corporation), assigned his contract to a third person. *Reg.* v. *Franklin*, 6 Ir. C. L. R. 239. Where a municipal council by by-law granted to defendant, upon certain conditions, a right to build a dam and bridge across a river, in consideration of which he promised to keep it in repair at his own expense for forty years, he was held to be disqualified. *Reg. ex rel. Patterson* v. *Clarke*, 5 P. R. 337. So where it was shown that the candidate elected was a surety for the treasurer of the town, and acting as solicitor for the town. *Reg. ex rel. Coleman* v. *O'Hare*, 2 P. R. 18. So a surety in any sense to the corporation. *Reg. ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71; *Reg. ex rel. Haner* v. *Roberts*, 7 P. R. 315. But a surety was held not disqualified under the following facts: The treasurer of a township was appointed by annual by-laws, which were silent as to time in 1859, 1860 and 1861. In 1861 the defendant became his surety, by bond, which bond did not state the duration of liability. In 1863 the same treasurer was also appointed by a similar by-law. In 1864 the by-law limited his liability to the year 1864. From that year to 1869, no time was specified. In 1869 he was appointed for one year. His accounts were audited, and found correct: *Held*, that defendant, his surety, was not disqualified. *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 309. The defendant was a road commissioner for the township under sec. 479, and entitled to a balance for commission on the money spent by the township on a certain ditch: *Held*, that he was disqualified. *Reg. ex rel. Ferris* v. *Iler*, 15 U. C. L. J. N. S. 158. At one time it was held that where work was done under a contract, and nothing remained but payment, the contractor was disqualified. *Reg. ex rel. Davis* v. *Carruthers*, 1 P. R. 114; *Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. But recent English authority is against that position. See *Royse* v. *Birley*, L. R. 4 C. P. 296. If, however, at the time of the election, there be a dispute in good faith between the candidate and the municipality, arising out of a matter of contract, the candidate is disqualified. *Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44; *Reg. ex rel. McMullen* v. *De Lisle*, 8 U. C. L. J. 291. A different rule prevails where all transactions have been *bona fide* closed. *Reg. ex rel. Armor* v. *Coste*,

tion by reason of his being a shareholder in any incorporated company having dealings or contracts with the council of

companies having dealings with corporations.

Ib. 290. There is no disqualification where a person is acquitted in equity from the contract, and a sealed instrument is all that is necessary to discharge it. *Reg. ex rel. Hill* v. *Betts*, 4 P. R. 113. The disqualification does not merely relate to the time of acceptance of office, but to the time of the election. *Ib.; Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126. To refer the qualification to the time when the person elected might actually take his seat at the council board would be wholly at variance with the spirit of the Act, and fatal to this very wholesome provision of the Act as to disqualification. *Per* Hagarty, J., *Ib.* 128. It is not enough to disqualify a person to show that he is the agent of the person who is really the contractor. Thus, an agent of an insurance company, paid by salary or commission, who, both before and since the election, had, on behalf of his company, effected insurances on several public buildings, the property of the corporation, and who at the time of the election had rented two tenements of his own to the board of school trustees for school purposes, was held not to be disqualified. *Reg. ex rel. Bugg* v. *Smith*, 1 U. C. L. J. N. S. 129. The words "interest in any contract," are not to be construed as including all possible advantage or gain flowing from a contract which somebody else, not being a partner, has with the corporation. See *Reg. ex rel. Armor* v. *Coste*, 8 U. C. L. J. 290; *Reg. ex rel. Piddington* v. *Riddell*, 4 P. R. 80. It is doubtful if they can be held to include sub-contracts. See *Le Feuvre* v. *Lankester*, 3 E. & B. 530. See also *Proctor* v. *Manwaring*, 3 B. & A. 145; *enderson* v. *Sherborne*, 2 M. & W. 237; *Barber* v. *Waite*, 1 A. & E. 514. Had the words been, "have any share or interest in, or be in any manner, directly or indirectly, concerned in any contract or bargain," a wider interpretation would have to be given to the section. See *Towsey* v. *White*, 5 B. & C. 125; *Pope* v. *Backhouse*, 8 Taunt. 239; *Foster* v. *The Oxford, &c., R. W. Co.*, 13 C, B. 200. See also Rev. Stat. Can. cap. 109, sec. 18, sub-s. 16. Where a by-law exempted from taxation for a term of years a mill to be built by a firm of which defendant was a member, it was held that there was a contract subsisting between defendant and the municipality, and that he was disqualified from holding the office of reeve. *Reg. ex rel. Lee* v. *Gilmour*, 8 P. R. 514. The objection to the qualification should be taken at the nomination. *Reg. ex rel. Tinning* v. *Edgar*, 4 P. R. 36; *Reg. ex rel. Adamson* v. *Boyd*, *Ib.* 204; *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 309. Where, after notice of disqualification, voters perversely throw away their votes, the candidate of the minority is entitled to the seat. *Rex* v. *Hawkins*, 10 East. 211; *Rex* v. *Parry*, 14 East. 548. But the notice should in such case be made to appear clear and satisfactory. *Reg. ex rel. Clarke* v. *McMullen*, 9 U. C. Q. B. 467; *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89; *Reg. ex rel. Forward* v. *Detlor*, 4 P. R. 197; *Reg. ex rel. Adamson* v. *Boyd*, *Ib.* 204; *Ex rel. Mackley* v. *Coaks*, 3 E. & B. 248. The notice must be such as to bring home knowledge to the voters, apparently, not only of the fact constituting disqualification, but the law that such fact does disqualify. *Reg.* v. *Tewkesbury*, 18 L. T. N. S. 851; *S. C.*, L. R. 3 Q. B. 629. See also *Reg. ex rel. Dexter* v. *Gowan*, 1 P. R. 104; *Reg. ex rel. Davis*

and lessees for 21 years from corporation.

such municipal corporation, or by having a lease of twenty-one years or upwards, of any property from the corporation, (*q*) but no such leaseholder shall vote in the council on any question affecting any lease from the corporation, and no such shareholder on any question affecting the company. (*r*) 46 V. c. 18, s. 77 (2).

Division III.—Exemptions.

Officials and Persons exempted. Sec. 78.

Exemptions.

78. All persons over sixty years of age, all members and officers of the Legislative Assembly of Ontario, and of the Senate or House of Commons of Canada, all persons in the civil service of the Crown, all Judges not disqualified by the last preceding section, all coroners, all persons in priest's orders, clergymen and ministers of the gospel of every denomination, all members of the Law Society of Ontario, whether barristers or students, all solicitors in actual practice, all officers of Courts of justice, all members of the medical profession, whether physicians or surgeons, all professors, masters, teachers and other members of any university, college, or

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v. *Carruthers*, *Ib.*, 114; *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 309; *In re Essex Election*, 9 U. C. L. J. 247; *Trench* v. *Nolan*, L. R. 6 Ir. C. L. 464; *In re Launceston Election—Drinkwater* v. *Dakin*, L. R. 9 C. P. 626; *In re Tipperary Election Petition*, L. R. 9 Ir. C. L. 217; *Reg.* v. *Mayor of Bangor*, 18 Q. B. D. 349; *South Renfrew Election*, 1 E. C. 339. See further, *Sublett* v. *Bedwell*, 12 Am. 338, note; Dillon, Mun. Cor., 3rd Ed., s. 196.

(*q*) The law was formerly different on both points. See *Reg. ex rel. Ranton* v. *Counter*, 1 U. C. L. J. 68; *Reg. ex rel. Padwell* v. *Stewart* 2 P. R. 18; *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; *Reg.* v. *York*, 2 G. & D. 105; 2 Q. B. 847; *Simpson* v. *Ready*, 12 M. & W. 736; *Reg.* v. *Francis*, 18 Q. B. 526; *Reg. ex rel. Mack* v. *Manning*, 4 P. R. 73; *Reg. ex rel. Patterson* v. *Clarke*, 5 P. R. 337. The lessor of the corporation so long as the reversion is not assigned is still disqualified. *Reg. ex rel. Ross* v. *Rastill*, 2 U. C. L. J. N. S. 160.

(*r*) Where four out of five of the members of a village council were shareholders in an incorporated company in the village, and notwithstanding their interest voted for the submission of a by-law to the electors for a bonus to the company, and after the vote of the electors passed the by-law, the by-law was set aside. *In re Baird and the Village of Almonte*, 41 U. C. Q. B. 415.

school in Ontario, and all officers and servants thereof, all millers and all firemen belonging to an authorized fire company (*s*)—are exempt from being elected or appointed members of a municipal council, or to any other municipal office. (*a*) 46 V. c. 18, s. 78.

PART III.

MUNICIPAL ELECTIONS.

TITLE I.—ELECTORS.
TITLE II.—ELECTIONS.

TITLE I.—ELECTORS.

DIVISION I.—QUALIFICATION.

Freehold, Household, Income, or Farmers' Son. *Sec.* 79.
Amount of rating requisite. *Sec.* 80.
Persons in default for non-payment of taxes. *Sec.* 81.
Elector must be named on voters' list. *Sec.* 82.
In new Municipality having no Assessment Roll. *Sec.* 83.
Where new Territory added. *Sec.* 84.
Joint or several rating on same property. *Secs.* 85, 86.
Householder, definition of. *Sec.* 87.

79—(1) Subject to the provisions of the next following eight sections the right of voting at municipal elections shall belong to the following persons, being men, or unmarried women or widows of the full age of twenty-one

Qualification of electors.

(*s*) See also as to Friemen R. S. O. c. 8, ss. 2-4.

(*a*) The last section contains the disqualifications, and this the exemptions. The difference between a disqualification and an exemption as regards an individual, is that a person disqualified, cannot hold office, but a person exempt, even though qualified need not. The one is an incapacity or disability; the other a privilege. It is an offence at common law for a person, without some legal ground of objection, to refuse to take upon himself an office to which he has been duly elected. So a qualified person duly elected refusing to accept office, may be summarily convicted and punished. See sec. 277.

years, (*b*) and subjects of Her Majesty by birth or naturalization, (*c*) being rated to the amount hereinafter provided on the revised assessment roll, upon which the voters' list used at the election is based, of the municipality, (*d*) for real property held in their own right (*e*) (or, in the case of married

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(*b*) Full age is twenty-one years, and is completed on the day preceding the anniversary of a person's birth. *Anon*, 1 Salk. 44; *Toder* v. *Sansam*, 1 Brown P. C. 468. If therefore one is born on 1st January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly 48 hours. Tomlin "Infant," I. Upon a question of age of a voter, the written memorandum of the clergyman who married his parents was held better evidence than the memory of individuals, unaccompanied by such memorandum. *Reg. ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533.

(*c*) See note *b* to sec. 73.

(*d*) The franchise is not to be lost to any one who is really entitled to vote, if his right can be sustained in a reasonable view of the requirements of the Act. *Reg. ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244. See also *Re McCulloch*, 35 U. C. Q. B. 452. The inclination of the Courts is in every way to favour the franchise. *Reg. ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214. The rating has been held sufficient where the surnames were correct, though the Christian names were erroneous. *Reg. ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244. Thus "Wilson Wilson" for "William Wilson." So "Simond Faulkner," for Alexander Faulkner." *Ib.* And "Thomas Sanderson, held *idem sonans* with "Thomas Anderson," so as to entitle the person bearing the latter name to vote. *Ib.* Any error in assessing as owner, tenant or occupant, is immaterial if the voter be qualified in any of these characters. *The Stormont Case*, 1 H. E. C. 21; *The Brockville Case*, *Ib.* 129. When a voter, properly assessed, who was accidentally omitted from the voters' list for polling sub-division No. 1, where his property lay, and entered in the voters' list for sub-division No. 2, voted without question in No. 1, though not on the list, vote held good. *Ib.* It is not only necessary that the freeholder or householder should be rated as such, but at the time of the election hold the property in respect of which he is rated. *Reg. ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152; *Anon*, 8 U. C. L. J. 76, and the property must be held in the right of the elector or that of his wife, and not simply in a representative capacity as executor, administrator or agent. *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; see further note *h* to sec. 73. A municipal council, has not, of course, any power to declare a qualification of voters different from this Act. *In re Bell and Manvers*, 3 U. C. C. P. 399; see further, *Rex.* v. *Spencer*, 3 Burr. 1827; *Newling* v. *Francis*, 3 T. R. 189; *Rex.* v. *Bumstead*, 2 B. & Ad. 699; *Rex.* v. *Chitty*, 5 A. & E. 609; *Commonwealth* v. *Woelper*, 3 S. & R. 29; *Petty* v. *Tooker*, 21 N. Y. 267.

(*e*) See note *h* to sec. 73.

men, held by their wives), or for income, (*f*) and having received no reward and having no expectation of reward for voting: (*g*)

Firstly. All persons, whether resident or not, (*h*) who are in their own right, or whose wives are at the date of the election freeholders of the municipality. Freeholders.

(*f*) This franchise was created in this Province by 37 Vict. c. 3, Ont.

(*g*) See the provisions for the prevention of corrupt practices, sec. 209 *et seq.*

(*h*) It is to be observed that residence is not essential to the right of a freeholder to vote. Residence for a month next before the election is, however, expressly made necessary in the case of a householder. Nice questions arise as to when a party can or cannot be said to be a *resident* of a municipality. See *Attorney General* v. *Parker*, 3 Atk. 576, *Etherington* v. *Wilson*, 1 Ch. D. 160; *King* v. *Foxwell*, 3 Ch. D. 518. "The proper meaning of the term 'residence' as used in relation to rating or voting has been discussed in numerous English authorities, which I have examined. No precise definition has been formulated, but rather the Courts have been anxious to point out that there may be shades of difference in the sense in which the word is used in different Acts. But in all the idea of a *home* and a *sleeping apartment* seems to be either expressed or implied. In a standard work on registration it is laid down that 'in order to constitute residence a party must possess at least a sleeping apartment,' and this statement seems to have received the approval of Chief Justice Erle in *Powell* v. *Guest*, 18 C. B. N. S. 72." Opinion of Moss, C. J., on case stated by Judge of county of Elgin under 41 Vict. c. 21, s. 11, now Rev. Stat. c. 8, s. 31. Sessional Papers of Ontario for 1879, No. 68, p. 14. A man, cannot, within the meaning of the municipal laws, be said to be resident in *two* municipalities at the same time. *Marr* v. *Vienna*, 10 U. C. L. J. 275. A man's residence is where his home is situate—where his family live. *Rex.* v. *Inhabitants of North Curry*, 4 B. & C. 959. Occasional absence from home to attend to business in another municipality, does not make his home less his residence. *Withorn* v. *Thomas*, 7 M. & G. 1. Where A. had a dwelling-house at Bowmanville, where his wife and family lived, but had a saw-mill and store and was postmaster in the township of Cartwright, which occasioned him frequently to visit that place, and who, while there, used to board with one of his men in a house owned by himself: *Held*, that after voting in Bowmanville he had no right to vote in Cartwright. *Reg. ex rel. Tayler* v. *Cæsar*, 11 U. C. Q. B. 461. Mere colourable residence is in no case sufficient. *Rex.* v. *Duke of Richmond*, 6 T. R. 560. There is no absolute rule for ascertaining when a party is a resident; it is a question to be determined in each case according to its circumstances. As to what is sufficient, see *Rex.* v. *Sergent*, 5 T. R. 466; *Bruce* v. *Bruce*, 2 B. & P. 229, note; *Rex.* v. *Mitchell*, 10 East. 511; *Withorn* v. *Thomas*, 7 M. & G. 1; *Reg. ex rel. Forward* v. *Bartels*, 7 C. P. 533; *Reg.* v. *Boycott*, 14 L. T. N. S. 599; *Reg.* v. *Exeter*, L. R. 4 Q. B. 110; *Manning* v. *Manning*, L. R. 2 P. & D. 223; *Taylor* v. *Overseers of the Parish of St. Abbot*, L. R. 6 C. P. 309; *Bond* v.

House-holders and tenants.

Secondly. All residents of the municipality, who have re-

Overseers of the Parish of St. George, Hanover Square, Ib. 312; *Reg. Guardians of St. Ives Union*, L. R. 7 Q. B. 467; *Durant* v. *Carter*, L. R. 9 C. P. 261; *Ford* v. *Pye, Ib.* 269; *Ford* v. *Hart, Ib.* 273; *McDougal* v. *Creedow*, 7 Ir. R. C. L. 175; *In re Norris*, W. N. for 1888, p. 87; *Wilton* v. *Falmouth*, 3 Shepley, 479; *State* v. *Frest*. 4 Harring. 558; *State* v. *De Casinova*, 1 Texas, 401; *Fry's Election*, 10 Am. 698.

Questions often arise between father and son, or other relatives, as to the position they hold to each other in respect to the homestead. Sons in this country often live with their fathers to a ripe age, on the promise or in the expectation of receiving the homestead "when the old man dies." After the "old man," through lapse of years or bodily infirmity, is disabled from doing much, if anything, in the tillage of the farm, he surrenders control to the son, "as the place is to be his." When these things happen nice questions present themselves as to "ownership" and "occupancy." In three cases tried under the Election Law for Ontario, several such questions were presented for decision, and, after much deliberation decided. *The Stormont Case*, H. E. C. 21; *The Brockville Case, Ib.* 129; *The South Grenville Case, Ib.* 163.

The general rule is, that a person living with his father, having no interest of any kind in the house or land, is not entitled to be assessed either as owner, tenant or occupant. *Reg. ex rel McVeon* v. *Graham*, 7 U. C. L. J. 125. But when it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to be on the roll. *The Brockville Case*, 1 H. E. C. 129. So where it is proved that for some time past the owner has given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use. *Ib.* Occupancy to the use and benefit of the occupant is sufficient. *Ib.* In a milling business, where the agreement between the father and the son was, that if the son would take charge of the mill and manage the business, he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use, it was held that the son had such an interest in the business, and, while the business lasted, such an interest in the land as entitled him to be on the roll. *The Stormont Case*, 1 H. E. C. 121. So, where the voter had been originally put upon the assessment roll merely to give him a vote, but by a subsequent arrangement with his father, he was to support the father, and apply the rest of the proceeds to his own support, it was held that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to be on the roll, though originally the assessment began in his name merely to qualify him. *Ib.* Where a deed was taken in the father's name, but the son furnishing the money, the father being in occupation with the assent of his son, and the proceeds not divided, it was held, that the voter being the equitable owner, notwithstanding

sided therein for one month next before the election, and

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the deed to the father, he had the right to be on the roll. *Ib.* So where a verbal agreement was made between the voter and his father in January, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following. *Ib.* But the rule is different where father and son live together on the father's farm, and the father is in fact the principal, to whom money is paid, and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates. *Ib.* So where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit. *Ib.* So where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it. *Ib.* Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy, the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870, held, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th March, 1870, and that to entitle him to vote, he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division. *Ib.* Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but not owning it; held, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote. *Ib.* Where the father had made a will in his son's favour, and told the son if he would work the place and support the family, he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debts due on the place, it was held that, as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote. *Ib.* The widow of an intestate owner continuing to live on the property with her children, who own the estate, and work and manage it, should not, till her dower be assigned, be assessed, nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate. *The Brockville Case*, 1 H. E. C. 129, where a husband had possession of a lot for which he was assessed as occupant and his wife as owner, but which belonged to the wife's daughters by a former husband, the vote was held good. *Ib.* When the owner died intestate

who are, or whose wives are, at the date of the election, householders or tenants in the municipality; (*i*)

Income voters.

Thirdly. All residents of the municipality (*j*) at the date of the election, who have continuously resided therein since the completion of the last revised assessment roll therefor, and who are in receipt of an income from some trade, office, calling, or profession, of not less than $400.

Farmers' sons.

Fourthly. All residents of the municipality at the date of the election who are farmers' sons, and have resided in the municipality on the farm of their father or mother for twelve months next prior to the return by the assessors of the as-

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and the husband of one of his daughters leased the property and received the rents, the husband was held not entitled to vote. *Ib.* Where on the trial of an election petition, the objection taken was, that the voter was not at the time of the final revision of the assessment roll the *bona fide* owner, occupant, or tenant of the property in respect of which he voted, and the evidence shewed a *joint* occupancy on the part of the voter and his father on land rated at $240, it was held that the notice given did not point to the objection that if the parties were joint occupants, they were insufficiently rated. *The Stormont Case*, 1 H. E. C. 21.

(*i*) The occupant of any separate portion of a house having a distinct communication with a road or street by an outer door, is a householder (sec. 87); and it seems to be now settled in England, where a house is let out in separate portions to different tenants, and the owner or landlord does not reside on the premises, though there is but one outer door common to all the tenants, that each distinct portion so let is the house of such occupier. See *Rex.* v. *Trapshaw*, 1 Leach. 427; *Rex.* v. *Carrell*, *Ib.* 237; *Rex.* v. *Bailey*, 1 Moody C. C. 23; and Littledale, J., in *Rex.* v. *Eye*, 9 A. & E. 680; see also *Wright and Stockport*, 7 M. & G. 95; *Toms* v. *Endell*, 5 C. B. 23; *Boon* v. *Howard*, L. R. 9 C. P. 277; *Reg. ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533; *In re Cook and Humber*, 11 C. B. N. S. 33; *In re Thompson and Ward*, L. R. 6 C. P. 327; *In re Stamper* v. *Overseers of Sunderland*, L. R. 3 C. P. 388; *In re Townshend and Overseers of St. Marylebone*, L. R. 7 C. P. 143; *In re Ford* v. *Boon*, *Ib.* 150; *In re Moger* v. *Escott*, *Ib.* 158; *In re Bendle* v. *Watson*, *Ib.* 163. A person is not the less a householder because he lets a portion of his house to lodgers. *Phillip's Case*, Alcock's Registration Cases, 20; *Duigenan's Case*, *Ib* 114; *Reg.* v. *Deighton*, 5 Q. B. 896. No lodger, though occupying the principal part of the house, is ever rated. The owner, however small the part may be which is reserved to himself, is in such case deemed the occupier of the whole. *Rex.* v. *Eyles*, Cald. 414. A person occupying apartments in a gaol held not to be a householder. *In re Charles* v. *Lewis*, 2 C. L. Chamb. R. 171. See further, *Reg.* v. *St. George's Union*, L. R. 7 Q. B. 90; *Attorney-General* v. *Mutual Tontine Westminster Chambers Association*, 1 Ex. D. 469.

(*j*) See note *h* to this section.

sessment roll on which the voters' list used at the election is based. (*k*)

When more than one son so resident.

(2) If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote to the father and all the sons, where the father is living, or to the sons alone, where the father is dead and the mother is a widow, then the right to vote shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote.

Where father living and assessment not sufficient to qualify more than one.

(3) If the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father, if living, and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm. (*l*)

Temporary absence.

(4) Occasional or temporary absence from the farm for a time or times not exceeding in the whole four months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmer's son to vote. (*m*)

(5) In this section

Interpretation.

"Farm" shall mean land actually occupied by the owner thereof and not less in quantity than twenty acres;

"Son" or "sons" or "farmer's son" or "farmers' sons" shall mean any male person or persons not otherwise qualified to vote, and being the son or sons of an owner and actual occupant of a farm;

"Father" shall include stepfather;

(*k*) This franchise was first created in 1877, by 40 Vict. c. 9.

(*l*) This follows from what precedes it. The foundation of the right being the rated and assessed value of the farm, if that value be not sufficient, if divided between the father and a son, to give a vote to each, the father alone is entitled to the vote.

(*m*) A man cannot be a resident in two places at one time. See note *h* to this section. But a man may have his residence in one place and be temporarily absent at another. Where the absence being an occasional or temporary one is real and not for more than four months of the twelve required as a residence under sub-sec. 4, such occasional or temporary absence is not to deprive the farmer's son of his vote.

"Election" shall mean an election for a member to a municipal council;

"To vote" shall mean to vote at an election; and

"Owner" shall mean a person who is proprietor in his own right, or whose wife is proprietor in her own right, of an estate for life or any greater estate either legal or equitable, except where the owner is a widow, and in such latter case the word "owner" shall mean proprietor in her own right of any such estate. (*n*) 46 V. c. 18, s. 79; 47 V. c. 32, s. 3; 50 V. c. 8, sched.

Amount of rating necessary.

80. In order to entitle a person to vote as aforesaid in respect of real property, such property, whether freehold or household or partly each, (*o*) must be rated at an actual value of not less than the following: (*p*)

In Townships—$100.
In Incorporated Villages—$200.
In Towns—$300.
In Cities—$400. 46 V. c. 18, s. 80.

Persons in default for non-payment of taxes not to vote.

81. No person who has been returned by the treasurer or collector under sec. 119 as in default for non-payment of his taxes on or before the 14th day of December next preceding any election, shall be entitled to vote in respect of income in any municipality, or in respect of real property in municipalities which have passed by-laws under sub-section 2 of section 489; (*q*) but any person who is entitled to vote and who

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(*n*) As to the meaning and effect of an interpretation clause such as this, see note *b* to sec. 2 of this Act.

(*o*) See note *g* to sec. 73.

(*p*) Formerly, for municipal purposes, real property was rated at annual value in cities, towns, and incorporated villages, and at actual value in townships. Since 1866 the distinction has been abolished. Actual value is now the rule in all local municipalities for all purposes. See *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; 32 U. C. Q. B. 348.

(*q*) The object of such a provision as the present is, in the case of intending voters, to enforce payment of taxes in the year in which they accrue, and under any circumstances before the election of the ensuing year. In the 29-30 Vict. c. 51, sec. 75, the provision was absolute, making it essential to the qualification of a voter that he should have paid on or before the sixteenth day of December next preceding the election, all municipal taxes due by him. That provision was omitted when the section was amended and re-enacted by Stat. 31 Vict. c. 30, sec. 9, Ont. It was in 36 Vict. c. 48, sec. 77,

produces and leaves with the deputy-returning officer at the time of the tendering of the vote a certificate from the treasurer of the municipality, or the collector of taxes, shewing that the taxes in respect of which the default had been made have since been paid, shall be entitled to vote; and the deputy-returning officer shall file the certificate, receive the vote and note the same on the defaulter's lists. 46 V. c. 18, s. 81; 50 V. c. 29, s. 3.

Elector must be named in voter's list.

No question of qualification to be raised.

82. Except in the case of a new municipality, for which there is no assessment roll, no person shall be entitled to vote at any election, unless he is one of the persons named or purporting to be named in the proper list of voters; and no question of qualification shall be raised at any election, except to ascertain whether the person tendering his vote is the same person as is intended to be designated in the list of voters. (*r*) 46 V. c. 18, s. 82.

In newly erected municipalities not having any assessment roll.

83. At the first election of a new municipality for which there is no separate assessment roll, every resident male inhabitant, though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property. (*s*) 46 V. c. 18, s. 83.

Where new territory added to city, town, or village, or a new city, town or village, erected with added territory, and no voter's lists including such new territory.

84. Where any territory is added for municipal purposes to any city, town, or village, or where a town with additional territory is erected into a city, or a village with additional territory is erected into a town, or in case a new village is formed, and an election takes place before voters' lists including the names of persons entitled to vote in such territory are made out for such new or enlarged city, town, or village, or before such lists are certified by the County Judge, then all persons who would have been qualified as electors in such territory if the same had remained separate from the city, town, or village, or if such town or village

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restored in a modified form. It is still dependent on the passing of a by-law by the council of the municipality. See sec. 489, sub-s. 2.

(*r*) See note *d* to sec. 79.

(*s*) In the case of a newly erected township there can be no assessment roll for such township, qualification in fact, without rating on any roll, is, therefore, all that is required in such a case See sec. 79 and notes thereto, as to the qualification of electors.

had not been erected into a city or town, or if such village had not been formed, shall be entitled to vote in the city, town, or village at such election. (*t*) 46 V. c. 18, s. 84.

If owner and occupant severally rated both to be deemed rated.

85. In case both the owner and occupant of any real property are rated severally but not jointly therefor, both shall be deemed rated within this Act. (*u*) 46 V. c. 18, s. 85.

When joint owners or occupants rated, rating to be equally divided.

86. Where real property is owned or occupied jointly by two or more persons, (*v*) and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated. (*w*) 46 V. c. 18, s. 86.

"Householder" defined.

87. Every occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, shall be deemed a householder within this Act. (*x*) 46 V. c. 18, s. 87.

(*t*) The necessity for such a provision as this section contains will be made apparent on reference to the language of Robinson, C. J., in *Reg. ex rel. Carroll* v. *Beckwith*, 1 P. R. 278. There was no such provision contained in the 36 Vict. c. 48, but the omission was afterwards supplied by 38 Vict. c. 3, sec. 16, and is now retained here.

(*u*) Each may vote in respect of his interest, when rated severally, the one as proprietor if a freeholder, and the other as tenant if a resident householder. See sec. 79. It is not necessary that the property should be assessed exclusively in the name of the person possessed to his own use. A landlord is so assessed where tenants occupy the premises; and he may, for purposes of qualification as a candidate, put together real properties, some occupied by himself and some by his tenants, to make up the assessed value required by the statute. *Reg. ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. R. 36.

(*v*) See sec. 21 of the Assessment Act.

(*w*) This applies to the case of joint owners or joint tenants. If each be rated for an amount sufficient to give a qualification, then each is to be deemed rated within the meaning of the section. The section apparently applies as much to candidates as electors, though placed under the head of "Electors." *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67. Where one of two partners, jointly interested in a property as co-tenants under a yearly tenancy, left the partnership before the day of nomination, and a new lease was afterwards granted to the remaining partner and a new partner, the retiring partner was held not to be qualified in respect of property under this Act. *Reg. ex rel. Adamson* v. *Boyd*, 4 P. R. 204.

(*x*) See note *i* to sec. 79.

TITLE II.—ELECTIONS.

Div. I.—Time and Place of Holding.
Div. II.—Returning Officers and Deputy-Returning Officers.
Div. III.—Oaths.
Div. IV.—Proceedings Preliminary to the Poll.
Div. V.—The Poll.
Div. VI.—Miscellaneous Provisions.
Div. VII.—Vacancies in Council.
Div. VIII.—Controverted Elections.
Div. IX.—Prevention of Corrupt Practices.

Division I.—Time and Place of Holding.

In Municipalities other than Counties. *Sec.* 88.
In New or Altered Municipalities. *Sec.* 89.
Place, how Fixed. *Sec.* 90.
In Separated Townships. *Secs.* 91, 92.
Election of Reeves, &c., in Townships and Villages. *Sec.* 93.
Election Divisions. *Sec.* 94.
Where Elections shall be held. *Secs.* 95, 96.

88. The electors of every municipality (except a county) shall elect annually, on the first Monday in January, (*a*) the members of the council of the municipality, except such members as have been elected at the nomination; (*b*) and the persons so elected shall hold office until their successors are elected or appointed and sworn into office, and the new council is organized. (*c*) 46 V. c. 18, s. 88.

Election to be held annually for members of councils of municipalities (except counties).

Term of office.

(*a*) The time deserves attention. Where time is fixed for the holding of an election it is in general essential, though many of the details as to the conduct of elections may be looked upon as only directory. See *Pennsylvania District Election*, 2 Par. (Pa.) 526; *Clarke's Case*, *Ib.* 521; *Commonwealth* v. *Commissioners*, 5 Rawle, 75. See also *People* v. *Brenham*, 2 Cal. 477; *People* v. *Fairbury*, 51 Ill. 149; *Haynes* v. *Washington County*, 19 Ill. 66; *Coles County* v. *Allison*, 23 Ill. 437.

(*b*) See sec. 116.

(*c*) At common law the office of an alderman * * * is a franchise for life though by prescription or charter it may be limited to a definite period, but the office was so much in the nature of a freehold that there was an implied right to hold over unless it was otherwise provided * * *. In this country, however, a public office is not considered as being in the nature of the grant or contract, and the officer as against the public, has no freehold or property in the office, and it is almost an invariable provision of law

First elections where corporations are newly erected or extended.

89. In case of the incorporation of a new township or union of townships; or of the separation of a junior township from a union of townships; or of the erection of a locality into an incorporated village; or of the erection of a village into a town or of a town into a city; or of an additional tract of land being added to an incorporated village, town, or city, (*d*) or in case of a new division into wards of a town or city, the first election under the proclamation or by-law by which the change was effected, shall take place on the first Monday in January next after the end of three months from the date of the proclamation, or from the passing of the by-law by which the change is made, and until such day the change shall not go into effect; but the nomination of candidates and the election of such officers as are unopposed, may, and shall be proceeded with at the same time and in the same manner as if such change had gone into effect on the last Monday of the month of December preceding such first election, or on such other day as the nominations may lawfully be held upon. (*e*) 46 V. c. 18, s. 89.

Times of elections.

Place to be fixed by by-law of municipalities.

90. The council of every city, town and village municipality (including a village newly erected into a town, and a town newly erected into a city), shall from time to time, by by-law, (*f*) appoint the place or places for holding the next ensuing municipal election, otherwise the election shall be held at the place or places at which the last election for the

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that all officers shall be elected or appointed for a fixed and definite period. To guard against lapses sometimes unavoidable the provision is almost always made in terms that the officer shall hold until his successor is elected and qualified * * * . Where in the charter or organic law of a corporation there is an express or implied restriction upon the time of holding office, as that the officers shall be annually elected on a particular day * * * in such case they cannot hold over beyond the next election day. * * * . But where by the constitution of the corporation they are elected for a term and until their successors are elected, * * * they may continue to hold and exercise their offices after the expiration of the year until they are superseded by the election of other persons in their places. See Dillon, Mun. Cor., 3rd ed., secs. 218-220.

(*d*) See sec. 84 as to voters lists.

(*e*) The whole three months must expire. The day of the issue of the proclamation or passing of the by-law as well as the day of the election, must be excluded from the computation of time. See *Blunt* v. *Heslop*, 8 A. & E. 577.

(*f*) The appointment of the place by resolution would be a nullity. *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219.

municipality, or wards, or polling subdivisions was held. (*g*) 46 V. c. 18, s. 90.

County council to appoint place of first election in junior townships after separation.

91. When in any year a junior township of a union has 100 resident freeholders and householders on the then last revised assessment roll, the council of the county shall, by a by-law to be passed before the thirty first day of October, in the same year, (*h*) fix the place for holding the first annual election of councillors in the township, and appoint a returning officer for holding the same, and otherwise provide for the due holding of the election according to law. 46 V. c. 18, s. 91.

Existing ward divisions in united townships to cease on dissolution of union.

92. In case of the separation of a union of townships, the existing divisions into wards, if any, shall cease, as if the same had been duly abolished by by-law, and the elections of councillors shall be by general vote, until the township or townships are divided into polling subdivisions or wards under the provisions of this Act. (*j*) 46 V. c. 18, s. 92.

Election of reeves, &c., in townships and incorporated villages to be by general vote.

93. The election in townships and incorporated villages of reeves, deputy reeves and councillors, shall be by general vote, except in the case of deputy-reeves and councillors in townships divided into wards, and shall be held at the place or places where the last meeting of the council was held, or in such other place or places as may be from time to time fixed by by-law. (*k*) 46 V. c. 18, s. 93.

(*g*) One Robert Gillis had a farm through which ran the division line between wards Nos. 2 and 3. His house stood on that part of the farm included in ward No. 2, but his barn on the part in ward No. 3. The township council passed a by-law that the election of councillors, for "Ward No. 3," should be held at "Robert Gillis's:" *Held*, that the by-law must be read as meaning some part of his property in ward No. 3, and that as the election was shewn to have taken place in the house without the limits of the ward, it was void. *Reg. ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178.

(*h*) The time for doing the act authorized being limited, the act cannot be done after the day named, unless the language used is to be construed as directory only. *Davison et al.* v. *Gill*, 1 East. 64. This would appear to be a continuing provision, liable to be brought into play in any year by by-law passed before 31st October.

(*j*) See sec. 94; see also note to sec. 137.

(*k*) It will be observed that in elections in incorporated villages and in townships *not* divided into wards, the reeves and deputy reeves, as well as councillors, are to be elected by the people, and by general vote. Where the township is divided into wards the councillors

Upon petition the council may, by by-law, divide townships into wards, &c.

94. In case a majority of the qualified electors of a township on the last revised assessment roll petition the council of the township to divide the township into wards, or to abolish or alter any then existing division into wards, the council shall, within one month thereafter, pass a by-law to give effect to such petition; (*l*) and if such petition is for division into wards, shall divide such township into wards, having regard to the number of electors in each ward, being as nearly equal as may be, and the number of wards for municipal purposes shall be four in all cases; (*m*) and where the township is divided into wards, and is entitled to one or more deputy reeves, the councillors shall, at their first meeting, elect from among themselves such deputy reeve or reeves. (*n*) 46 V. c. 18, s. 94.

Election of deputy-reeves, &c., in such case.

Election to be held in municipality.

95. Every election shall be held in the municipality to which the same relates. (*o*) 46 V. c. 18, s. 95.

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elect the deputy reeves, see. 94. The intention of having reeves and deputy reeves elected by the people, is to prevent men from, in effect, electing themselves to these offices by combining in small bodies. The intention of having a general vote is to destroy the sectional strife about the expenditure of money, which often arises where each councillor looks upon himself as a representative of a particular ward and not of the whole township. This section is in effect a re-enactment of the Act of 1866 (29-30 Vict. c. 51, s. 92).

(*l*) This provides for direct legislation by the electors themselves in the matter to which the section has reference. It is not in the discretion of the council to pass or refuse to pass a by-law dividing a township into wards, or abolishing or altering any existing division, provided a majority of the qualified electors petition that a particular course be adopted. In the event of such a petition being presented, it is made the duty of the council not merely to pass the required by-law, but to do so "within one month" after the presentation of the petition.

(*m*) The power is limited. There must be in all cases at least four wards. The number of electors in each ward should be as nearly as possible equal. Population rather than geographical situation is to be regarded.

(*n*) The rule is different where one township is not divided into wards. In such case the reeves and deputy reeves, as well as councillors, are elected by the people. See sec. 93.

(*o*) It is only proper that the election for each municipality should, for the convenience of voters, be held within the limits of that municipality. Cities, towns and incorporated villages are quite distinct from and independent of the townships in which they are situate. It is therefore provided by the next section that no election of township councillors shall be held within any city, town, or incorporated village. See note *g* to sec. 90.

96. No election of township councillors shall be held within any city, town or incorporated village, (*p*) nor shall any election for a municipality, or any ward thereof, be held in a tavern or in a house of public entertainment licensed to sell spirituous or fermented liquors. (*q*) 46 V. c. 18, s. 96.

Election of township councillors.

DIVISION II.—RETURNING OFFICERS AND DEPUTY RETURNING OFFICERS.

When election by polling subdivisions. *Sec.* 97.
When not. *Sec.* 98.
Death or Absence, provision for. *Sec.* 99.
Authority of. *Secs.* 100, 101.
Special Constables. *Sec.* 101.

97.—(1) The council of every municipality in which the election is to be made by wards or polling subdivisions, shall, from time to time, by by-law appoint : (*r*)

By-law for an election by wards or polling subdivisions.

(*a*) The places for holding the nominations for each ward ;

(*b*) The returning officers who shall respectively hold the nominations for each ward : (*s*).

(*c*) The places at which polls will be opened in the municipality in case a poll is required ;

(*d*) The deputy returning officers who shall preside at the respective polling places.

(2) The clerk of the municipality shall be the returning officer for the whole municipality, and in the case of a poll being required, the deputy returning officers shall make to him the returns for their respective wards or polling subdivisions. 46 V. c. 18, s. 97.

Clerk of municipality to be returning officer for whole municipality.

(*p*) See the last note.

(*q*) There may be a tavern where spirituous liquors are sold, which is not licensed to sell spirituons liquors. Licensed shops do not seem to be included. Contravention of the statute would, it is believed invalidate the election. See *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219 ; *Reg. ex rel. Preston* v. *Preston*, 2 C. L. Chamb. R. 178.

(*r*) An appointment by resolution is not sufficient. *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219.

(*s*) The duty of the returning officer is to preside at the nomination, and to post up in the office of the clerk of the municipality the names of the persons proposed for the respective offices. Sec. 117. The clerk of the municipality is the general returning officer. See sub-s. 2.

Returning officer for elections not by wards or polling subdivisions.

98. In the case of a municipality in which the election is not to be by wards or polling subdivisions, the clerk shall be the returning officer to hold the nomination of candidates at all elections after the first, (*t*) and shall also perform all the duties hereinafter assigned to deputy returning officers. 46 V. c. 18, s. 98.

The death or absence of the returning officer or deputy returning officer provided for.

99. In any case where a deputy returning officer refuses or neglects to attend at the time and place he is required by the returning officer to receive his voters' lists, and other election papers, the clerk of the municipality as returning officer shall appoint another person to act in his place and stead, and the person so appointed shall have all the powers and authority that he would have had if he had been appointed by by-law. (*u*) In case, at the time appointed for holding a nomination or poll, the person appointed to be returning officer or deputy returning officer has died, or does not attend to hold the nomination or poll within an hour after the time appointed, or in case no returning officer or deputy returning officer has been appointed, the electors present at the place for holding the nomination or poll may choose from amongst themselves a returning officer or deputy returning officer, and such returning officer or deputy returning officer shall have all the powers, and shall forthwith proceed to hold the nomination or poll, and perform all the other duties of a returning officer or deputy returning officer. (*v*) 46 V. c. 18, s. 99; 50 V. c. 29, s. 4.

Returning Officers and Deputy Returning Officers to be conservators of the peace, their powers.

100. Every returning officer and deputy returning officer shall, during the days of the election, or of the voting

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(*t*) Where the election is to be by wards or polling subdivisions, the councils appoint returning officers to hold the nominations and the deputy returning officers to preside at the polling places. See sec. 97.

(*u*) This part of the section makes provision for the case of a deputy returning officer who does not attend at the proper time to receive the papers required for the election. In such case it is the duty of the clerk to make a new appointment.

(*v*) These officers, should not be partizans. It is the duty of such an officer to stand indifferent between the contending parties; to have no interests to serve for either, or for himself; to approach his duty with the simple desire to do strict justice; to be ready and willing to give reasonable information as to the state of his proceedings; to conceal nothing; to evade no proper enquiry; to mislead no one by silence, or exhibit anything calculated to deceive; and he ought not to make a pretence of strictly following the letter of the law, to defeat it. *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 48.

of electors upon a by-law, act as a conservator of the peace for the city or county in which the election or voting is held; and he, or any Justice of the Peace having jurisdiction in the municipality in which the election or voting is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person, who assaults, beats, molests or threatens any voter coming to, or remaining at, or going from the election or voting; (*w*) and, when thereto required, all constables and persons present at the election or voting, shall assist the returning officer, or deputy returning officer, or Justice of the Peace. 46 V. c. 18, s. 100.

Special constables may be sworn in.

101. Every returning officer, or deputy returning officer, or Justice of the Peace may appoint and swear in any number of special constables to assist in the preservation of the peace and of order at an election or at the voting of electors upon a by-law; and any person liable to serve as constable, and required to be sworn in as a special constable by a returning officer or deputy returning officer, or Justice, shall, if he refuses to be sworn in or to serve, be liable to a penalty of $20, to be recovered to the use of any one who will sue therefor. (*x*) 46 V. c. 18, s. 101.

DIVISION III—OATHS.

Of freeholder. *Sec.* 102.
Of householder or tenant. *Sec.* 103.
Of income voter. *Sec.* 104.
Of farmer's son. *Sec.* 105.
Administering. *Sec.* 106.

(*w*) In general, the officer will act under this section upon his own view. But when, instead of acting on facts observed by himself, or within his own knowledge, he acts on the information of others, it is suggested that he should take a regular information, and proceed as any other Magistrate would be required to do under like circumstances. An example would be, when the complaint is an assault upon a voter coming to or returning from the election, committed at a distance from the poll. The main object of the section is to empower the returning officer to act promptly on the spot in the hearing and determining of offences occurring at the poll; but in point of authority he is not so restricted.

(*x*) The penalty may, it is apprehended, though not so expressed, be sued for in any Court of competent jurisdiction, for instance, in a Division Court. See *Brash q. t. v. Taggart*, 16 U. C. C. P. 415.

Oaths, etc., of person claiming to vote as a freeholder.

102. The only oaths or affirmations to be required of a person claiming to vote in respect of a freehold, shall be as follows, or to the like effect : (*y*)

You swear (*or* solemnly affirm) that you are the person named, or purporting to be named in the list (*or* supplementary list) of voters now shewn to you (*z*) (*shewing the list to the voter*) ;

(*In the case of an unmarried woman or widow claiming to vote.*) That you are unmarried (*or* a widow, *as the case may be* ;)

That you are in your own right (*or* your wife is) a freeholder ; (*a*)

That you are a natural born (*or* naturlized) subject of Her Majesty, (*b*) and of the full age of twenty-one years ; (*c*)

(*In the case of Municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward and (*if the elector is tendering his vote for mayor, reeve, or deputy reeve*) that you have not voted before or elsewhere in this municipality, at this election for mayor, reeve *or* deputy reeve, *as the case may be*) ;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election ;

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting at this election :

So help you God.

(*y*) It was at one time held that the swearing falsely at an election of alderman for the city of Toronto by a person that he is the person described in the list of voters entitled to vote was not perjury. *Thomas* v. *Platt*, 1 U. C. Q. B. 217.

(*z*) A returning officer who receives illegal votes, not on his list, may be made to pay costs. *Reg. ex rel. Johnson* v. *Murney*, 5 U. C. L. J. 87. See further *Reg. ex rel. Totten* v. *Benn*, 4 U. C. L. J. 162. Where a voter has parted with the property in respect of which he votes, though on the list he has no legal right to vote. *Reg. ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152. If a returning officer, upon discovering an error in the entry of a vote, has the power to make the necessary correction, he must make it promptly, and only in a case where the error is beyond doubt. *Ib.*

(*a*) See note *h* to sec. 79.

(*b*) See note *b* to sec. 73.

(*c*) See note *b* to sec. 79.

(*In the case of a new municipality in which there has not been any assessment roll, then instead of referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote.*) 46 V. c. 18, s. 102; 47 V. c. 32, s. 4. In new municipality where no assessment roll.

103. The oath or affirmation to be required of a person claiming to vote as householder or tenant, (*d*) shall be as follows, or to the like effect: Oath of householder or tenant.

You swear (*or* solemnly affirm) that you are the person named, or purporting to be named, in the list (*or* supplementary list) of voters now shewn to you (*shewing the list to the voter*); (*e*)

(*In the case of an unmarried woman or widow claiming to vote.*) That you are unmarried (*or* a widow, *as the case may be*);

That on the day of 18 (*the day certified by the clerk of the municipality as the date of the return, or of the final revision and correction of the assessment roll upon which the voters' list used at the election is based*) you were actually, truly, and in good faith, possessed to your own use and benefit, as tenant or occupant, of the real estate in respect of which your name is entered on the said list; (*f*)

That you are (*or* your wife is) a householder or tenant within this municipality;

That you have been resident within this municipality for one month next before this election; (*g*)

That you are a natural-born (*or* naturalized) subject of Her Majesty, (*h*) and of the full age of twenty-one years; (*i*)

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling place;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor, reeve, or deputy reeve*) that you have not voted before or elsewhere in this municipality at this election for mayor (reeve, *or* deputy reeve, *as the case may be*);

That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender at this election;

That you have not received anything nor has anything been promised to you directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

(*d*) See note *i* to sec. 79.

(*e*) See note *z* to sec. 102.

(*f*) See note *i* to sec. 79.

(*g*) See note *h* to sec. 79.

(*h*) See note *b* to sec. 73.

(*i*) See note *b* to sec. 79.

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or refrain from voting at this election:

So help you God.

In new municipality where no assessment roll.

(*In the case of a new municipality in which there has not been any assessment roll, then, instead of swearing to residence for one month next before the election, and referring to the list of voters, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality.*) 46 V. c. 18. s. 103; 47 V. c. 32, s. 4.

Oath of income voter

104. The oath or affirmation to be required of a person claiming to vote in respect of income shall be as follows:

You swear (*or* solemnly affirm) that you are the person named (*or* purporting to be named by the name of) on the list (*or* supplementary list) of voters now shewn to you (*shewing the list to the voter*); (*j*)

(*In the case of a widow or unmarried woman claiming to vote.*) That you are unmarried (*or* a widow, *as the case may be*);

That on the day of 18 (*the day certified by the clerk of the municipality as the date of the final revision and correction of the assessment roll upon which the voters' list used at the election is based*) you were, and thenceforward have been continuously, and still are, a resident of this township (city, town *or* village, *as the case may be*); (*k*)

That at the said date, and for twelve months previously, you were in receipt of an income from your trade (office, calling, *or* profession, *as the case may be*) of a sum of not less than $400;

That you are a subject of Her Majesty by birth (*or* naturalization, *as the case may be*); (*l*) and are of the full age of twenty-one years; (*m*)

(*In the case of municipalities not divided into wards.*) That you have not voted before at this election, either at this or any other polling places;

(*In the case of municipalities divided into wards.*) That you have not voted before at this election, either at this or any other polling place in this ward; and (*if the elector is tendering his vote for mayor, reeve or deputy reeve*) that you have not voted before or elsewhere in this municipality at this election for mayor, reeve or deputy reeve, *as the case may be*);

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or refrain from voting at this election:

(*j*) See note *z* to sec. 102.

(*k*) See note *h* to sec. 79.

(*l*) See note *b* to sec. 73.

(*m*) See note *b* to sec. 79.

So help you God. 46 V. c. 18, s. 104 ; 47 V. c. 32, s. 4.

Oath of farmer's son.

105. The oath or affirmation to be required from a farmer's son claiming to be entitled to vote (*n*) shall be as follows:

You swear (*or* solemnly affirm) that you are the person named (*or* purporting to be named by the name of ,) in the list *or* supplementary list) of voters now shewn to you (*shewing the list to the voter*); (*o*)

That on the day of , 18 (*the day certified by the clerk of the municipality as the date of the return, or of the final revision and correction of the assessment roll upon which the voters' list used at the election is based, as the case requires*), *A. B. (naming him or her)*, was actually, truly, and in good faith possessed to his (*or* her) own use and benefit as owner, as you verily believe, of the real estate in respect of which your name is so as aforesaid entered on said ist of voters ;

That you are a son of the said *A. B.* ;

That you resided on the said property for twelve months next before the said day, not having been absent during that period, except temporarily, and not more than four months in all ;

That you are still a resident of this municipality, and entitled to vote at this election ;

That you are a subject of Her Majesty by birth (*or* naturalization *as the case may be*) ; and are of the full age of twenty-one years ;

In the case of municipalities not divided into wards.) That you have not voted before at this election, either at this or any other polling place ;

(*In the case of municipalities divided into wards.*) That you have no voted before at this election, either at this or any other polling place in this ward, and (*if the elector is tendering his vote for mayor, reeve, or deputy reeve*) that you have not voted before or elsewhere in the municipality at this election for mayor (reeve, *or* deputy reeve *as the case may be)* ;

That you have not received anything, nor has anything been promised you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

And that you have not directly or indirectly paid or promised anything to any person either to induce him to vote or refrain from voting at this election :

So help you God.

46 V. c. 18, s. 105.

When and how oaths are to be administered.

106. Such oaths or affirmations shall be administered by the returning officer or deputy returning officer as the case may be, at the request of any candidate or his authorized agent, and no inquiries shall be made of any voter, except

(*n*) See sec. 80.

(*o*) See note *z* to sec. 102.

with respect to the facts specified in such oaths or affirmations. (*p*) 46 V. c. 18, s. 106.

DIVISION IV.—PROCEEDINGS PRELIMINARY TO THE POLL.

Nomination Meetings. *Secs.* 107,-111.
Presiding Officer. *Secs.* 108, 110, 114.
Provision for Christmas Day *Sec.* 112.
Interval between Nomination and Election in Townships. *Sec.* 113.
Notice of Nomination. *Sec.* 115.
Proceedings at Nomiantion. *Sec.* 116.
Poll, when and where to be held. *Sec.* 116.
Resignations—Notifications as to Candidates. *Sec.* 117.
Votes to be given by Ballot. *Sec.* 118.
List of Defaulters in payment of Taxes. *Sec.* 119.
Ballot Boxes. *Sec.* 120.
Ballot Papers. *Secs.* 121–123.
Polling Places. *Secs.* 124, 125.
Ballot Papers, Voters' Lists, etc. to be furnished to Deputy Returning Officers. *Secs.* 124, 126, 129-132, 135.
Directions to Voters. *Secs.* 126, 127.
Voters' and Defaulters' Lists. *Secs.* 128–134.
Certificates as to the Assessment Roll. *Sec.* 135.
In Municipalities not divided into Wards, Clerk to perform duties of Deputy Returning Officer. *Sec.* 136.
Where Electors may vote. *Secs.* 137–141.
Penalty for voting twice for mayor, etc. *Sec.* 140.

Meeting for nomination of mayor, reeve, deputy reeves, etc.

107.—(1) A meeting of the electors shall take place for the nomination of candidates for the office of mayor in cities, and for mayor, reeve and deputy reeves in towns, (*q*) at the

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(*p*) The returning officer should, on request of either of the candidates or his agent (whether such agent be or be not a duly qualified elector), administer the necessary oaths or affirmations. *Reg ex.rel. Gardener* v. *Perry.*, 3 U. C. L. J. 90: see also *Reg.* v. *Spalding*, Car. & M. 568. The refusal of an elector to take the oath is, if the relator would otherwise have had a majority, a good ground for setting aside the election. *Reg. ex rel Dillon* v. *McNeil*, 5 U. C. C. P. 137. See as to prosecutions for false oaths, under enactments corresponding to the above, the following cases: *Reg.* v. *Dodsworth*, 2 Moo. & R. 72; 8 C. & P. 218, where form of indictment is given. See further, *Reg.* v. *Ellis*, Car & M. 564; *Reg.* v. *Thompson*, 2 Moo. & R. 355, as to the evidence.

(*q*) A nomination is a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named. *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 47. See further, note *d* to sec. 116.

hall of the municipality, (*r*) on the last Monday in the month of December, annually, at ten of the clock in the forenoon, (*s*) and the deputy-reeves shall be designated as first, second, third, etc., according to the number to be elected. 46 V. c. 18, s. 107.

Nominations of councillors in towns.

(2) The council of any incorporated town, divided into wards may, by by-law, provide that the nomination for councillors for the several wards shall be held at the same time and place as the nomination for mayor, reeve and deputy-reeve.

(3) Where no such by-law is passed the nomination of councillors in such town shall take place as provided by section 109 of this Act.

(4) Notwithstanding anything herein contained, the council of any incorporated town or village may by by-law provide that the nomination for mayor, reeve, deputy-reeve or reeves and councillors may be held at half past seven o'clock in the evening instead of at the hours and times in this Act mentioned. 51 V., c. 28, s. 10.

The clerk to preside.

Chairman.

108. The clerk of the municipality shall be the returning officer to preside at such meeting, or in case of his absence, the council shall appoint a person to preside in his place; and if the clerk or the person so appointed does not attend, the electors present shall choose a chairman or person to officiate from among themselves, and such clerk or chairman shall have all the powers of a returning officer. (*t*) 46 V. c. 18, s. 108.

(*r*) The sessions of the county of St. John had pursuant to act of the assembly appointed a certain school-house in the parish of L. as the place of meeting for the nomination of candidates for parish officers, but the poll clerk gave a notice for the meeting to be held at the house of one C, in the same settlement and not more than seventeen rods distant from the school-house. The parishioners met at the place named in the notice, organized the meeting, and then adjourned to meet at the school-house where the election afterwards took place. The election was held to be void. *Ex parte Robinson*, 3 Pugs. N. B. 389.

(*s*) If, through some blunder, the majority of the electors were to mistake the day of election, and abstain from voting, it might be held that an election by the minority would not be a valid election. *Reg* v. *Bradford*, 20 L. J. Q. B. 226.

(*t*) The council should provide for the absence of the clerk, if at all apprehended or expected. Should they fail to do so, the electors present may choose a chairman. Should the electors do so, it is

Meetings in cities, towns etc. for nomination of aldermen, etc.

109. A meeting of the electors (*u*) shall take place for the nomination of candidates for the offices of aldermen in cities, councillors in towns, and of reeves, deputy-reeves and councillors in townships not divided into wards, and incorporated villages at noon, on the last Monday in December annually, at the town hall of such municipalities or at such place therein, and in cities and towns, at such places in each ward thereof, as may from time to time be fixed by by-law, subject in the case of townships to the provisions of section 111, and the deputy-reeves shall be designated as first, second, third, etc., according to the number to be elected, and the hour for the nomination of candidates for the offices of aldermen in cities, may, in and by the by-law fixing the places for such nomination, be fixed at half-past seven o'clock in the evening, instead of at noon. (*v*) 46 V. c. 18, s. 109; 51 V. c. 28, s. 11.

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submitted the chairman so chosen would have a right to conduct the nomination to its termination, notwithstanding the presence in the meantime of the clerk, or a person appointed by the council as his substitute. The electors under this section are not apparently required to wait before making an appointment as they are under sec. 99. The proceedings at the meeting, if not presided over by the officer or person assigned, would in all probability be held absolutely void. "It cannot be a mere matter of procedure or form, that there should be no person presiding at the meeting in whom is vested the authority for conducting the election and for maintaining peace and order, to whom the legislature has entrusted the counting of votes and certifying the result. In the absence of any such person, I do not see how a poll can be taken, or the result legally ascertained." *Per* Draper, C. J., *In re Hartley and Emily*, 25 U. C. Q. B. 15. "The Legislature says, and I must take it, for very good reasons, that the election is to be conducted by a particular officer, and then another person goes and conducts it. Even if I had a discretion, I should not exercise it in supporting such a practice. It is very much the same as if a cause was referred to a barrister, and he were to go away for his own pleasure and leave it to his clerk, and then it was said that the award was good because it was made just as well as if it had been made by the barrister. Or if a cause was to be heard by a Judge, and he left it to one of the masters, he might conduct it just as well as the Judge, but that would not do." *Per* Crompton, J., in *Reg.* v. *Backhouse* 12 L. T. N. S. 579. See further *Pickering* v. *James*, L. R. 8 C. P. 489.

(*u*) A meeting of the electors means a coming together of the electors. The attendance of one person only could not be a meeting. See *Sharp* v. *Dawes*, 2 Q. B. D. 26.

(*v*) It will be observed that the change of time now provided for, must be made in the by-law fixing the places of nomination.

In townships divided into wards.

110. In townships divided into wards, the nomination of candidates for the office of reeve (*w*) shall be held at ten of the clock in the forenoon on the last Monday in December, (*x*) at such place in the township as may from time to time be fixed by by-law, (*y*) and the township clerk shall preside; (*z*) the nomination of candidates for the office of councillor, to be elected for each ward, shall take place at noon, at the town hall of the township or at such place in the township or in each ward as may be fixed by by-law subject, however, to the provisions of section 111. (*a*) 46 V. c. 18, s. 110.

Place of meeting for nomination of reeves, etc.

111. Where a township is so situated that the territory of such township adjoins the limits of any city, town or incorporated village, such city, town, or village may be designated by by-law as the place of meeting for the nomination of candidates for the offices of reeves, deputy-reeves, and councillors, as the case may be, under and in accordance with the provisions of the preceding two sections of this Act. 48 V. c. 39, s. 5.

If nomination day falls on Christmas Day.

112. When the last Monday in December happens to be Christmas Day, the nomination of candidates for the offices of mayor and aldermen in cities, and of mayor, reeve, deputy-reeve and councillors in other municipalities, shall take place on the preceding Friday, at the times and places and in the manner prescribed by law. 46 V. c. 18, s. 111.

County council may by by-law, lengthen time between nomination and polling in townships

113.—(1) Every county council may, by by-law, made on or before the first day of July in any year provide that the day for the nomination of candidates for reeve, deputy-reeves, and councillors in townships shall be upon the last Monday but one in December, but all the other provisions of law relating to municipal elections shall apply to the elections in such townships.

(*w*) See note *q* to sec. 107.

(*x*) See note *s* to sec. 107.

(*y*) See note *r* to sec. 107.

(*z*) See note *t* to sec. 108.

(*a*) Formerly persons to fill the office of reeve and councillors were nominated at the same time and place. The result was that there was some confusion as to the different persons to fill the different offices. the design of this section is to avoid such confusion by providing that nominations for reeve shall be at 10 o'clock in the forenoon, and the nomination for councillor at noon.

Copy of by-law to be sent to townships affected.

(2) Forthwith, after the passing of such by-law, the county clerk shall transmit a copy thereof, to the clerks of the townships to which the same relates. 46 V. c. 18, s. 112.

Presiding officer.

114. The returning officer appointed for each ward, as in section 97 mentioned, or the clerk as the case may be, shall respectively preside at the meeting for the nomination of candidates, and in case of the absence of such presiding officer, the meeting may choose a chairman (*b*) 46 V. c. 18, s. 113.

Notice of nomination meeting.

115. The clerk or other returning officer whose duty it is to preside at the meeting for the nomination of candidates shall give at least six days notice (*c*) of such meeting. 46 V. c. 18, s. 114.

Nomination and proceedings incident thereto.

116. At the said meetings, the person or persons to fill each office, shall be proposed and seconded *seriatim*; (*d*) and if only one candidate for any particular office is proposed, the clerk or other returning officer or chairman, shall, after the lapse of one hour from the time fixed for holding the meeting, declare such candidate duly elected for such office. (*e*) But if two or more candidates are proposed for any

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(*b*) See note *t* to sec. 108.

(*c*) This means six full days. *In re Sams* v. *Toronto*, 9 U. C. Q. B. 181. Where a statute says a thing shall be done so many days, or so many days at least, before a given event, the day of the thing done and that of the event must both be excluded. *Reg.* v. *Shropshire*, 8 A. & E. 173; *Mitchell* v. *Foster*, 9 Dowl. 527. A notice of "ten days at least" for a hearing, means that there shall elapse at least ten periods of twenty-four hours each between the day of the delivery and the day of hearing. *Norton* v. *Salisbury*, 4 C. B. 37. It means ten clear, full and complete days, and not nine days and fractions of other two days. *Adey* v. *Hill*, 4 C. B. 40. See further *Howes* v. *Peirce* 1 C. P. D. 670.

(*d*) Where more persons are proposed and seconded than necessary, and, after polling commenced, all except the necessary number retire, it would seem that the returning officer cannot close the poll unless under the circumstances mentioned in this section. See *Reg. ex rel. Horne* v. *Clarke*, 6 U. C. L. J. 114. The election is commenced when the returning officer receives the nomination of candidates. *Reg.* v. *Cowan*, 24 U. C. Q. B. 606.

(*e*) By allowing an hour to elapse between the nomination and the proceeding to close the election in case of no further nominations, the Legislature means to protect the electors against haste and surprise. *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 48. Unless an opportunity be given to the electors present to express their assent or dissent, there cannot be said to be an election by acclamation. *Ib.*

particular office, and if a poll is required by them respectively, or by any elector, the clerk or other returning officer or chairman shall adjourn the proceedings for filling such office until the first Monday in January next thereafter, when a poll or polls shall be opened in each ward or polling subdivision, at such place or places respectively as may be fixed by the by-law of the said councils for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer. (*f*) 46 V. c. 18, s. 115.

Poll when and where to be held.

117. At the nomination meeting or at any time within two days thereafter, any person proposed for one or more offices may resign, or elect for which office he is to remain nominated; and in default he shall be taken as nominated for the office in respect of which he was first proposed and seconded; (*g*)

Resignation of persons proposed for office at nomination meetings.

(*f*) Where a poll is demanded the election commences with it as being the regular mode of popular election. In the nature of things the demand for a poll never is made, nor can it reasonably be expected to be made until the necessity for such demand arises, that is until one of the contending parties is dissatisfied with the decision of the chairman upon the show of hands. *Per* Tindall, C. J., in *Campbell* v. *Maund*, 5 A. & E. 881. The polling is a continuation of the proceedings initiated by the nomination. See *Reg.* v. *Archdeacon of Chester*, 1 A. & E. 342. Where a poll is granted a poll must be had even although all the candidates except one after the nomination and before the polling decline the contest. *Wexford Election*, L. R. 3 Ir. C. L. R. 612; *Reg.* v. *Cooper*, L. R. 5 Q. B. 457. At a township election after the nomination of several candidates the returning officer adjourned to another room to receive votes, but none were tendered. He then closed the poll. *Held*, the election was void. *Reg. ex rel. Smith* v. *Blouse*, 1 P. R 180. It is necessary that during the hours for polling the electors should have free access to the polling places. The fact that a large number of duly qualified electors could not cast their votes, is a sufficient reason for setting aside an election, if the result would have been affected by the unpolled votes. *Reg. ex rel. Davis* v. *Wilson*, 3 U. C. L. J. 165; See further, *Reg. ex rel. Kirk* v. *Asselstine*, 1 U. C. L. J. 49; *Reg. ex rel. Gibbs* v. *Branigan*, 3 U. C. L. J. 127; *Anon.* 8 U. C. L. J. 76.

(*g*) It may be that the same person is qualified to fill incompatible offices, such as reeve, deputy reeve, and councillor, and has been nominated for more than one of these offices. A person so nominated must elect for which office he is to remain nominated. If he fail to do so, he is to be considered as nominated only for the office for which he was first proposed and seconded. This provision is absolutely necessary to avoid entanglement. A candidate proposed for only one office may also resign, with the consent of his proposer and seconder and of the electors present. *Reg. ex rel. Coyne* v. *Chisholm*, 5 P. R. 328.

the clerk or other returning officer or chairman shall, on the day following that of the nomination, post up in the office of the clerk of the municipality the names of the persons proposed for the respective offices; (*h*) provided always that the resignation after the nomination meeting of any person so proposed shall be in writing, signed by him and attested by a witness, and shall, within said two days, be delivered to the clerk of the municipality; provided also, that if, by reason of such resignation only one candidate remains proposed for a particular office, the clerk or other returning officer shall declare such candidate duly elected for such office. 47 V. c. 32, s. 5.

Proviso.

Proviso.

Votes to be by ballot.

118. In case of a poll at an election of persons to serve in municipal councils, the votes shall be given by ballot. 46 V. c. 18, s. 117.

List of Defaulters in Payment Taxes.

Preparation of list of defaulters.

119.—(1) On or before the day of nomination of candidates if the collector's roll has been returned to the treasurer of the municipality, the treasurer shall prepare and verify on oath, or if the collector's roll has not been so returned, the collector shall prepare and verify on oath, a correct alphabetical list of—

(*a*) All persons who, being on the voters' list (that is to say the first and second parts thereof) by reason of their income only, have not paid their municipal taxes on such income on or before the 14th day of December preceding the election; and

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(*h*) Duties are cast as well on the chairman of the meeting as on the clerk of the municipality, the performance of which is necessary to the proper conduct of the election. It is essential that each returning officer should have a list of the candidates; but where there was an omission of the name of one of the candidates and the question to be decided was not the mere abstract ground of the omission of the name, but only what effect it had upon the final result of the election; and it did not appear that the result would have been different if the name omitted had been properly entered on the list, the election was upheld. *Reg ex rel. Walker* v. *Mitchell.* 4 P. R. 218. A voter who permits one candidate to retire without objection of any kind, and after his retirement nominates another candidate for the office, will not be allowed afterwards to insist upon having the name of his first nominee entered upon the poll books. *Reg. ex rel. Coyne* v. *Chisholm*, 5 P. R. 328.

(*b*) In municipalities which have passed by-laws under sub-section 2 of section 489 of this Act, all persons on the voters' list (that is to say the first and second parts thereof), who have been assessed for real property, but have not paid their municipal taxes on such property on or before the 14th day of December preceding the election.

List to be made for each polling subdivision.

(2) Where a municipality is divided into polling sub-divisions, such a list of defaulters shall be made for each polling sub-division.

Certified copies to be furnished.

(3) The person preparing the said defaulters' lists, shall furnish to all persons applying for the same, certified copies thereof, and of the affidavit verifying the same, in the same manner and for the same compensation as copies of the voters' list are to be furnished. 46 V. c. 18, s. 118.

Ballot Boxes.

Ballot boxes to be furnished.

120—(1) Where a poll is required, the clerk of the municipality (*i*) shall procure or cause to be procured as many boxes (hereinafter called ballot boxes) as there are wards or polling sub-divisions within the municipality.

How made.

(2) The ballot boxes shall be made of some durable material, shall be provided with a lock and key, and shall be so constructed that the ballot paper can be introduced therein, and cannot be withdrawn therefrom unless the box be unlocked.

Delivery of to deputy returning officers.

(3) When it becomes necessary for the purposes of an election to use the ballot boxes, it shall be the duty of the clerk of the municipality, two days at least before the polling day, to deliver one of the ballot boxes to every deputy-returning officer appointed for the purposes of the election.

Clerk to preserve boxes for future elections.

(4) The ballot boxes, when returned to the clerk after the election, shall be preserved by him for use at elections for the municipality; and it shall be the duty of the clerk to have

(*i*) The clerk cannot properly act as clerk and be a candidate for office. See *Reg.* v. *White*, L. R. 2 Q. B. 557. See further *Reg.* v. *Ward*, L. R. 8 Q. B. 210. The duties by this section cast upon the clerk are essential to the success of voting by ballot, one object of which is to secure secrecy of voting. So important is the performance of the duties by the clerk deemed that a penalty of $100 is recoverable in respect of every ballot box which he fails to furnish. See sub-sec. 5 of this section.

ready for use, at all times, as many ballot boxes as there are wards or polling sub-divisions in the municipality.

Penalty on failure to furnish boxes.

(5) If the clerk fails to furnish ballot boxes in the manner herein provided, he shall incur a penalty of $100 in respect of every ballot box which he has failed to furnish in the manner prescribed.

Deputy returning officers to procure boxes when not supplied.

(6) It shall be the duty of the deputy-returning officer in every ward or polling sub-division not supplied with a ballot box within the time prescribed, forthwith to procure one to be made, and he may issue his order upon the treasurer of the municipality in which such ward or polling sub-division is situate for the cost of the ballot box, and the treasurer shall pay to the deputy-returning officer the amount of the order. (*j*) 46 V. c. 18, s. 119.

Ballot Papers.

Ballot papers to be printed.

121—(1) Where a poll is required, the clerk of the municipality shall forthwith cause to be printed, at the expense of the municipality, such a number of ballot papers as will be sufficient for the purposes of the election (*k*).

Contents and form of ballot papers.

(2) Every ballot paper shall contain the names of the duly nominated candidates, arranged alphabetically in the order of their surnames; or if there are two or more candidates with the same surname, then in the order of their other names. (*l*) 46 V. c. 18, s. 120.

(*j*) The amount of the order is as it were a debt due by the corporation. The deputy returning officer not supplied with a ballot box within the time described, is authorized to bind the corporation in the contraction of the debt. It is made the imperative duty of the treasurer to pay the debt.

(*k*) It is not enough for the setting aside of an election held under this Act there should appear to be a mere irregularity in the mode of procedure. See sec. 175.

(*l*) The ballot papers must contain the names of the duly qualified candidates. It is not said expressly that they must contain the Christian as well as the surnames, but section 123 requires the ballot papers to be in the form given in the schedule to the Act which contains both the Christian and surname. Whether inaccuracies in these particulars would be a ground for setting aside an election apart from the result is a question. See *Reg.* v. *Coward* 16 Q. B. 1819; *Reg. v. Bradley*, 3 E. & E. 634; *Reg* v. *Plenty*, L. R. 4 Q. B. 346; *Mather* v. *Brown*, 1 C. P. D. 596. See further s. 175. A candidate was twice nominated, one nomination being good and the other bad. His name appeared in the ballot papers twice once in respect of each

122—(1) The names of the candidates for mayor in cities, and for mayor, reeve, and deputy-reeves in towns, shall not be included in the same ballot paper with the names of the candidates for aldermen and councillors respectively; (*m*) but

Different sets of ballot papers to be prepared.

(2) In cities one kind or set of ballot papers shall be prepared for all the wards or polling sub-divisions, containing the names of the candidates for mayor, and another kind or set shall be prepared for each ward or polling sub-division containing the names of the candidates for aldermen in the ward; and

In cities.

(3) In towns one kind or set of ballot papers shall be prepared for all the wards or polling sub divisions, containing the names of the candidates for mayor and reeve and deputy-reeve, and another kind or set shall be prepared for each ward or polling subdivision, containing the names of the candidates for councillors in the ward; and

In towns

(4) In townships divided into wards, one kind or set of ballot papers shall be prepared for all the wards, containing the names of the candidates for reeve, and another kind or set shall be prepared for each ward, containing the names of the candidates for councillors in the ward. 46 V. c. 18, s. 121.

In townships divided into wards.

123. The ballot papers shall be in the form of Schedule A to this Act. (*n*) 46 V. c. 18, s. 122.

Form of ballot papers.

Polling Places.

124. In case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the opening of the poll, deliver or cause to be delivered to every deputy-returning officer the ballot papers which have been prepared for use in the ward or polling sub-division for which such deputy-returning officer has been

Clerk to furnish deputy-returning officers with ballot papers etc.

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nomination. Seventy-one voters made their marks to his name under one nomination and three hundred and one under the other. All the voters so voting intended to vote for the candidate and if both classes of voters could be added together he had a majority and was entitled to be returned: Held, he was entitled to be returned. *Northcote* v. *Pulsford* L. R. 10 C. P., 476. The names of the candidates must be arranged alphabetically in the order of their surnames, see *Mather* v. *Brown*, 1 C. P. D. 596.

(*m*) See note *k* to s. 121.

(*n*) See note *l* to s. 121.

appointed to act, and shall also furnish to the deputy-returning officer or see that he is furnished with the necessary materials for voters to mark the ballot papers; and such materials shall be kept at the polling place by the deputy-returning officer for the convenient use of voters. (*o*) 46 V. c. 18, s. 123.

Compartments wherein voters may mark votes.

125. Every polling place shall be furnished with a compartment in which the voters can mark their votes screened from observation; and it shall be the duty of the clerk of the municipality and deputy-returning officers respectively, to see that a proper compartment for that purpose is provided at each polling place. (*p*) 46 V. c. 18, s. 124.

Directions to Voters.

Clerk to furnish deputy-returning officer with directions for voter's guidance.

126. In case of municipalities divided into wards or polling subdivisions, the clerk of the municipality shall before the opening of the poll deliver, or cause to be delivered to every deputy returning officer such number of printed directions, for the guidance of voters in voting, as he may deem sufficient, and shall so deliver or cause to be so delivered at least ten copies of such printed directions; such directions shall be printed in conspicuous characters, and may be according to the form in Schedule B to this Act. (*q*) 46 V. c. 18, s. 125.

Deputy-returning officers to placard the directions.

127. Every deputy-returning officer shall before the opening of the poll, or immediately after he has received the printed directions from the clerk of the municipality, if he did not receive the same before the opening of the poll, cause the printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. (*r*) 46 V. c. 18, s. 126.

(*o*) These duties are ministerial. The neglect of them, except so far as the neglect has the effect of making an election impossible, would not nullify the election. See s. 175 and notes thereto.

(*p*) There can be no efficient system of voting by ballot without secrecy. Hence provision is to be made to enable voters to "mark their votes screened from observation." Disregard of this duty when the neglect is not total but partial is not *per se* a ground for setting aside an election. *Reg. ex rel. Preston* v. *Touchburn*, 6 P. R. 344. See further, s. 175 and notes.

(*q*) See note *k* to s. 121.

(*r*) See note *k* to s. 121.

Voters' and Defaulters' Lists.

Proper voter's list to be used at an election.

128. Subject to the provisions of the next following three sections, the proper list of voters to be used at an election shall be the first and second parts of the last list of voters certified by the Judge and delivered or transmitted to the clerk of the peace under *The Voters' Lists Act.* 46 V. c. 18, s. 127. Rev. Stat. c.8.

For first election in new municipality.

129. For the first election of a new municipality for which there is no separate assessment roll, the clerk of the municipality shall provide every deputy-returning officer with a poll book, prepared according to the form of Schedule C to this Act, instead of a voters' list, and either the deputy-returning officer or his sworn poll clerk shall therein enter, in the proper column, the name of every person offering to vote, and at the request of any candidate or voter, shall note the property on which the person claims to vote opposite his name. 46 V. c. 18, s. 128.

Voters' lists in cases under section 84.

130.—(1) Where any territory is added for municipal purposes, to any city, town, or village, or where a town with additional territory is erected into a city, or village with additional territory is erected into a town, or where a new village is formed, and an election takes place before voters' lists including the names of the persons entitled to vote in such territory are made out, or before such lists are certified by the County Judge—in all such cases, the clerk of the new or enlarged city, town, or village, shall extract the names of the several persons who would be entitled to vote in the territory composing or added to (as the case may be) the city, town, or village if such territory had remained separate from the city, town, or village, from the last filed or certified voters' list of the municipality or municipalities to which such territory formerly belonged, containing the names of the persons entitled to vote in respect of such territory, and shall place such names in lists or supplementary lists (as the case may be).

Form of supplementary lists.

(2) Such lists or supplementary lists shall be made in the form of Schedule C to this Act, and shall be signed by the clerk, and delivered by him to the proper deputy-returning officers for the purpose of enabling the persons named in such lists to vote at the election. 46 V. c. 18, s. 129.

List of voters.

131.—(1) In any municipality for which there is a separate assessment roll, but for which no voters' list for the

Rev. Stat. c. 8.

municipality has been filed with the Clerk of the Peace or certified by the County Judge under *The Voters' Lists Act*, the clerk of the municipality shall, before the poll is opened, prepare and deliver to the deputy-returning officer for every or any ward or polling sub-division, a list in the form of Schedule C to this Act, containing the names, arranged alphabetically, of all male persons appearing by the then last revised assessment roll to be entitled to vote in that ward or polling sub-division, (*s*) and shall attest the said list by his solemn declaration in writing under his hand ; (*t*)

Persons in arrears for taxes shall be excluded from list.

(2) In the case of

(a) Income voters, and

(b) Persons assessed for real property, if the municipality has passed a by-law under sub-section 2 of section 489 of this

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(*s*) The purpose of furnishing the list is not to enable the returning officer to judge of the sufficiency or insufficiency of votes taken, but that all persons interested in the election may have a check at hand at the time of polling the votes. *Reg. ex rel. Dundas* v. *Niles*, 1 C. L. Chamb. R. 198 ; see also sec. 79. Persons whose names are on the original roll, though omitted by accident from the list, may, it seems, claim a right to vote ; but not persons whose names are on the list, though not on the original roll. *Reg. ex rel. Helliwell* v. *Stephenson*, 1 C. L. Chamb. R. 270 ; See further, *North Victoria Election*, 1 H. E. C. 671. The list furnished to the returning officer ought to be alphabetical, and if not so the returning officer should himself make it alphabetical. *Reg. ex rel. Davis* v. *Wilson* 3 U. C. L. J. 165, *per* Richards, J. Where the returning officer was not furnished with the list and notwithstanding proceeded with the election, *held*, that it was an irregularity which rendered the election liable to be avoided if the objection were taken by one qualified to urge it, although it might not *ipso facto* render the election void. *In re Charles* v. *Lewis*, 2 C. L. Chamb, R. 171. The asquiescence of the candidates in the election being proceeded with under these circumstances, though it might preclude *them* from disputing the validity of the election on that ground, could not affect the right of a voter who was no party to such arrangement. *Ib.* In such case, however, it would seem to be necessary to shew that the absence or inaccuracy of the list prejudiced the election, or that some candidate or voter refused on that ground to proceed, and relied on the objection. *Reg ex rel. Ritson* v. *Perry*, 1 P. R. 237 ; *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218. Where the returning officer used the original roll instead of the list, having first announced that he would do so, and no one objected, the election was supported. *Reg. ex rel. Hall* v. *Grey* 15 Q. B. 257.

(*t*) It would also seem that it is no objection to the list that it was not verified as the statute requires, unless some objection be taken before or during the election. *Reg. ex rel. Ritson v. Perry*, 1 P. R. 237.

Act, the clerk shall exclude from the list such persons as may be returned to him by the treasurer or collector as being in default for not having paid their municipal taxes respectively on or before the 14th day of December preceding the election; and every list of voters so prepared shall be the proper voters list to be used at the election. 46 V. c. 18, s. 130.

Delivery of copies of voters' list and defaulters' list to deputy returning officers.

132. In the case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the poll is opened, deliver to the deputy-returning officer, for every ward or polling sub-division, a copy, according to the form of schedule C to this Act, certified to be correct, of the proper list of voters for the ward or polling subdivision under section 128 and following sections; and also a copy of the proper defaulters' list for the polling subdivision, certified by the treasurer or collector pursuant to section 119 of this Act. 46 V. c. 18, s. 131.

Copies may be prepared by clerk of municipality or procured from clerk of peace.

Rev. Stat. c. 8.

133. The copies of the voters' list in the next preceding section mentioned may be prepared by the clerk of the municipality, or may be procured from the Clerk of the Peace, if filed under *The Voters' Lists Act*, and in the latter case the Clerk of the Peace shall be entitled to receive the sum of six cents for every ten voters whose names are on the list. 46 V. c. 18, s. 132.

Defaulters' lists to be evidence for deputy-returning officer as to payment of taxes.

134. The defaulters' lists furnished and verified by the treasurer or collector as aforesaid, shall be the evidence on which the deputy-returning officers shall act in ascertaining the payment or non-payment of taxes by persons claiming to vote in respect of income, or in respect of real property, in the cases mentioned in section 119 of this Act. 46 V. c. 18, s. 133.

Certificates as to the Assessment Roll.

Clerk to give certificate of dates of return and final revision of assessment roll.

135.—(1) The clerk of the municipality shall before the opening of the poll, deliver or cause to be delivered to every deputy-returning officer a certificate (which may be in the form of Schedule D to this Act), of (*a*) the day when the assessment roll upon which the voters' list to be used at the election is based, was returned by the assessor, and also (*b*) of the day when the said assessment roll was finally revised and corrected.

Fee for certificate.

Penalty for neglect.

(2) The clerk shall also give such certificate upon payment of the sum of twenty-five cents, to any person applying for

the same under a penalty of $200 in case of neglect or refusal.

To be evidence of such date at the poll.

(3) The certificate when delivered to the deputy-returning officer, shall be the evidence upon which he shall act in inserting in the oath to be administered to voters the date of the return or final revision and correction of the assessment roll as the case may be.

When assessment roll to be considered as finally revised and corrected.

Rev. Stat. c. 193.

4. An assessment roll shall be understood to be finally revised and corrected when it has been so revised and corrected by the Court of Revision for the municipality, or by the Judge of the County Court in case of an appeal, as provided by *The Assessment Act*, or when the time during which such appeal may be made has elapsed, and not before. 46 V. c. 18, s. 134.

Municipalities not divided into Wards.

In municipalities not divided into wards or polling sub-divisions clerk to perform duties of deputy-returning officers.

136. In case of municipalities which are not divided into wards or polling sub-divisions, the clerk shall perform the duties which in other cases are performed by deputy-returning officers, and shall provide himself with the necessary ballot papers, and also with the materials for marking ballot papers, printed directions before mentioned, copies of the voters' list and defaulters' list, and certificate of the dates of the return and final revision of the assessment roll, similar to those required to be furnished to deputy-returning officers; and the clerk shall perform the like duties with respect to the whole municipality as are imposed upon a deputy-returning officer in respect of a ward or polling sub-division. 46 V. c. 18, s. 135.

Where Electors may vote.

Voting in towns and cities.

137. In towns and cities every elector may vote in each ward in which he has been rated for the necessary property qualification, but in case of mayor of cities, mayor, reeve or deputy-reeve of towns, the elector is limited to one vote. (*v*) 46 V. c. 18, s. 136.

(*v*) Before the Act of 1866, it was held that a voter entitled to vote in the ward in which he resided, could not vote in any other ward. *Anon* 8 U. C. L. J. 76. That Act enabled every elector in a *Town* or *Village* to vote in *each* ward in which he had been rated for the necessary property qualification. This section re-enacts that provision. The meaning is, that a voter is no longer restricted to one

Voting in townships and villages.

138. In townships and incorporated villages divided into wards or polling sub-divisions, no elector shall vote in more than one ward or polling subdivision for the same candidate. (*w*) 46 V. c. 18, s. 137.

Where persons are to vote for mayor, reeve and deputy-reeve.

139. Every elector who is entitled to a vote in more than one ward or polling subdivision shall vote for mayor, in cities, and for mayor, reeve and deputy-reeve in towns, and for reeve in townships divided into wards, at the polling place of the ward or polling subdivision in which he is resident, if qualified to vote therein; or when he is a non-resident or is not entitled to vote in the ward, or polling sub-division where he resides then, where he first votes, and there only. (*x*) 46 V. c. 18, s. 138; 50 V. c. 29, s. 5.

Penalty for voting twice for mayor, reeve or deputy reeve.

140.—(1) Any person who votes for mayor, reeve, or in towns or townships for deputy-reeve, after having already voted for mayor, reeve or deputy-reeve at some other polling place at that election, shall incur a penalty of $50 to be recovered, with full costs of suit, by any person who will sue for the same in the Division Court having jurisdiction where the offence was committed; and any person against whom judgment is rendered shall be ineligible either as a candidate or elector at the next annual (*y*) elections. 46 V. c. 18, s. 139.

(2) The receipt by any voter of a ballot paper within the polling booth, shall be *prima facie* evidence that he has there and then voted. 50 V. c. 29, s. 6.

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vote, but, if qualified, in several wards, may vote in each of such wards, except in the case of the election of mayor of cities, reeves or deputy reeves of towns, who are elected by the entire vote of the municipality.

(*w*) As to the division of townships into wards, see sec. 94, and as to polling places in townships and incorporated villages, see sec. 489 (1). Though the voter by this section can only vote once for reeve, he may give one vote for councillors in townships in each ward in which he is rated. See note *v* to s. 137.

(*x*) There is only one vote for each of the officers named (ss. 137, 138) that vote must be given in the ward or polling sub-division in which the voter resides if qualified to vote therein, but when he is non-resident or not entitled to vote in the ward or polling sub-division in which he resides, where he first votes and *there* only.

(*y*) The express mention of the word "annual" may have the effect of limiting the incapacity to the regular January elections.

Certificate to entitle deputy-returning officers, poll clerks and agents to vote where stationed.

141.—(1) The clerk of the municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed deputy-returning officer or poll clerk, or who has been named as an agent of a candidate to attend at any polling place other than the one where he is entitled to vote, shall give to such elector a certificate that he is entitled to vote at the polling place where he is to be stationed during the polling day; and the certificate shall also state the property or other qualification in respect of which he is entitled to vote.

Right to vote on production of certificate.

(2) On the production of the certificate, the deputy-returning officer, poll clerk or agent shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling station where he would otherwise have been entitled to vote; and the deputy-returning officer shall attach the certificate to the voters' list; but no such certificate shall entitle such elector to vote at such polling place unless he has been actually engaged as such deputy-returning officer, poll clerk or agent during the day of polling; nor to vote for aldermen in cities, or councillors in municipalities divided into wards, except in the ward where he would otherwise be entitled so to vote. (*z*)

Who to administer oath.

(3) In case of a deputy-returning officer voting at the polling station where he has been appointed, the poll clerk appointed to act at the polling place, or in the absence of the poll clerk any elector authorized to be present, may administer to the deputy-returning officer the oath required by law to be taken by voters. 46 V. c. 18, s. 140.

DIVISION V.—THE POLL.

Ballot box to be exhibited. *Sec.* 142.
Duty of Deputy-Returning Officer. *Secs.* 142-145, 155.
How votes to be received. *Secs.* 143-145.
How ballot paper to be marked. *Sec.* 146.
Exclusion from balloting compartment. *Sec.* 147.

(*z*) The obligation of a voter is to vote in the ward in which he resides. S. 139. This section creates an exception in favour of the persons named, to vote for candidates, other than aldermen in cities or councillors in municipalities divided into wards, at the polling place where he is stationed during the polling day. To entitle a voter to the benefit of this provision he must have been "actually engaged" in the capacity specified in the certificate.

Ballot papers not to be taken away. *Sec.* 148.
Proceedings in case of incapacity to mark ballot. *Sec.* 149.
Ballot paper inadvertently spoiled. *Sec.* 150.
Who may be present in polling place. *Sec.* 151.
Counting the votes—Objections—Statement. *Sec.* 152.
Who may be present at the counting of the votes. *Sec.* 153.
Certificates of state of Poll. *Sec.* 154.
Returns, etc., to be made by Deputy-Returning Officers. *Sec.* 155.
Clerk to cast up votes and declare who is elected. *Secs.* 156, 160.
Right of Clerk, Deputy-Returning Officers and Poll clerks to vote. *Sec.* 157.
Riots. *Secs.* 158, 159.
Declarations of office to be made by persons elected. *Sec.* 161.

Deputy-returning officer to shew box empty to persons present, and then lock and seal it.

142. The deputy-returning officer shall, immediately before the commencement of the poll, shew the ballot box to such persons as are present in the polling place, so that they may see that it is empty, and he shall then lock the box and place his seal upon it in such manner as to prevent its being opened without breaking the seal; (*a*) and he shall then place the box in his view for the receipt of ballot papers, and shall keep it so locked and sealed. (*b*) 46 V. c. 18, s. 141.

Proceedings by deputy-returning officer on tender of vote. Name.

143. Where a person claiming to be entitled to vote presents himself for the purpose of voting, the deputy-returning officer shall proceed as follows: (*c*)

1. He shall ascertain that the name of such person is entered, or purports to be entered upon the voters' list for the ward or polling subdivision for which such deputy-returning officer is appointed to act.

(*a*) The penalty for interfering with a ballot box is prescribed by sec. 167. The object of a seal is to guarantee the security of the contents of the box until the termination of the election, and the seal should therefore be of a substantial character.

(*b*) These provisions are made necessary to prevent what in the United States is known as "Stuffing the ballot box."

(*c*) The duties of the deputy returning officer are most clearly set forth. They are stated as nearly as possible in consecutive order. As to his duties at the close of the poll see sec. 152 and notes. The omission of any of these duties would not do more than affect, on a scrutiny, one particular vote concerned. See s. 175.

Recording.

2. He shall record or cause to be recorded in the proper column of the voters' list, the residence and the legal addition of such person.

Oath.

3. If such person takes the oath or affirmation required to be taken by voters in the manner directed by sections 102 to 105 inclusive of this Act, the deputy-returning officer shall enter or cause to be entered opposite such person's name, in the proper column of the said voters' list, the word "*Sworn*," or "*Affirmed*," according to the fact.

Objection.

4. Where the vote is objected to by any candidate or his agent, the deputy-returning officer shall enter the objection, or cause the same to be entered in the voters' list by writing opposite the name of such person, in the proper column, the words "*Objected to*," stating at the same time by which candidate or on behalf of which candidate the objection has been made, by adding after the words "*Objected to*" the name only of such candidate.

Refusal to take the oath.

5. Where such person has been required to take the oath or affirmation, and refuses to take the same, the deputy-returning officer shall enter or cause to be entered opposite the name of such person, in the proper column of the voter's list, the words "*Refused to be Sworn*," or "*Refused to Affirm*," according to the fact; and the vote of such person shall not be taken or received; and if the deputy-returning officer takes or receives such vote, or causes the same to be taken or received, he shall incur a penalty of $200.

Deputy-returning officer to sign name on ballot paper.

6. Where the proper entries respecting the person so claiming to vote have been made in the voters' list in the manner prescribed, the deputy-returning officer shall sign his name or initials upon the back of the ballot paper.

Delivery of paper to voter.

7. The ballot paper shall be delivered to such person.

Deputy-returning officer to explain mode of voting.

8. The deputy-returning officer may, and upon request shall, either personally or through his sworn poll clerk, explain to the voter, as concisely as possible, the mode of voting. 46 V. c. 18, s. 142.

Deputy-returning officer refusing, etc., to initial ballot paper.

144. Every deputy-returning officer refusing, or wilfully omitting to sign his name or initials upon the back of the ballot paper, as provided for by sub-section 6 of section 143 of this Act, shall forfeit to any person aggrieved by such refusal, or omission, the sum of $10, in respect of every ballot paper deposited at his polling subdivision, upon which the

said deputy-returning officer has not signed his name or initials as aforesaid; and the same may be recovered in the manner provided for the recovery of penalties by section 214 of this Act. 46 V. c. 18, s. 143.

Deputy-returning officer to note in list voters to whom ballot papers given.

145. The deputy-returning officer shall place, or cause to be placed, in the columns of the voters' list, headed "*Mayor*," "*Reeve*" (or "*Mayor and Reeve*"), "*Alderman*," and "*Councillor*," as the case may be, his initials opposite the name of every voter receiving a ballot paper, to denote that the voter has received a ballot paper for mayor, reeve, alderman, or councillor, as the case may be. (*d*) 46 V. c. 18, s. 144.

Marking ballot paper.

146. Upon receiving from the deputy-returning officer the ballot paper so prepared as aforesaid, the person receiving the same shall forthwith proceed into the compartment provided for the purpose, and shall then and therein mark his ballot paper in the manner mentioned in the directions contained in Schedule B to this Act, by placing a cross, thus X (*e*) on the right-hand side, opposite the name of any candidate for whom he desires to vote or at any other place within the division which contains the name of such candidate; and he shall then fold the ballot paper across, so as to conceal the names of the candidates, and the marks upon the face of such paper, and so as to expose the initials of the deputy-returning officer, and leaving the compartment, shall, without delay, and without shewing the front to any one or so displaying the ballot paper as to make known to any person the names of the candidates for or against whom he has marked his vote, deliver the ballot paper so folded to the deputy-returning officer, who shall, without unfolding the same, or in any way disclosing the names of the candidates, or the marks made by such elector, verify his own initials, and at once deposit the same in the ballot box in the presence of all

(*d*) Whether a particular voter did vote may be ascertained by means of the operation of this section, but for whom he voted must and ought to remain a matter of secrecy. Any marking that would enable the returning officer to say for whom he voted would be illegal. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733. See note *o* to s. 152.

(*e*) This is a mark well devised for the purpose, easy of execution by men of the most moderate intelligence, and at the same time perfectly neutral in its character, so as to be practically incapable of betraying its authorship by its appearance. Per Lord Neaves in the *Wigtown Case*, 2 O'M. & H. 215, 220. Similar provision is made in the Ontario Election Act, Rev. Stat. c. 9, sec. 98. As to the cases respecting the marking of ballot papers. See note *o* to s. 152.

persons entitled to be present and then present in the polling place; and the voter shall forthwith leave the polling place. (*f*) 46 V. c. 18, s. 145.

Exclusion from balloting compartment.

147. While a voter is in a balloting compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper. (*g*) 46 V. c. 18, s. 146.

Voter not to take his ballot paper from polling place.

148. No person who has received a ballot paper from the deputy-returning officer shall take the same out of the polling place; and any person having so received a ballot paper, who leaves the polling place without first delivering the same to the deputy-returning officer in the manner prescribed, shall thereby forfeit his right to vote; and the deputy-returning officer shall make an entry in the voters' list, in the column for remarks, to the effect that such person received a ballot paper, but took the same out of the polling place, or returned the same, declining to vote, as the case may be; and in the latter case the deputy-returning officer shall immediately write the word "*Declined*" upon such ballot paper, and shall preserve the same; and in case the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall return said ballot paper to the clerk of the municipality, as hereinafter directed. (*h*) 46 V. c. 18, s. 147.

(*f*) The deputy returning officer must verify his initials without delay, and without shewing the front to any one, or so displaying the ballot paper, as to make known to any person the names of the candidates for or against whom the voter has marked his vote. See also *Pickering* v. *James*, L. R. 8 C. P. 489.

As to the effect of non-compliance or imperfect compliance with these directions, either on the part of the voter or of the returning officer. See s. 152 and notes.

(*g*) It is essential to secrecy for the purposes of this Act that there should be solitude. A compartment is provided for the purpose of enabling the voter in solitude to mark his ballot paper. Not only are all persons prohibited from entering the compartment while occupied by the voter but they are prohibited from being in any position from which they can observe the mode of marking the ballot paper by the voter. But a partial disregard of the provisions of this section does not necessarily avoid the election *Reg. ex rel. Preston* v. *Touchburn*, 6 P. R. 344. See further s. 175.

(*h*) The marking of the ballot paper would not be of any avail as regards the result of the election unless the paper so marked were deposited in the ballot box for the purpose of being counted. The delivery of the ballot paper by the voter under s. 146 to the return-

Proceedings in case of incapacity to mark ballo paper.

149. In case of an application by a person claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in case of any person claiming to be entitled to vote who makes a declaration that he is unable to read, the proceedings (*i*) shall be as follows:—

1. The deputy-returning officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in manner directed by such person, and shall place the ballot paper in the ballot box.

2. The deputy-returning officer shall state or cause to be stated in the voters' list, by an entry opposite the name of such person in the proper column of the voters' list, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

3. The declaration of inability to read, or of incapacity to mark a ballot paper, may be in the form of Schedule E to this Act, and shall be made by the person claiming to be entitled to vote, at the time of the polling, before the deputy-returning officer, who shall attest the same as nearly as may be according to the form given in Schedule F to this Act, and the said declaration shall be given to the deputy-returning officer at the time of voting. 46 V. c. 18, s. 148.

Proceedings in case ballo paper cannot be used.

150. A person claiming to be entitled to vote, who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the deputy-returning officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the deputy-returning officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the deputy-returning officer shall immediately write the word "*Cancelled*" upon the ballot paper, and preserve the same; and in case the clerk of the muni-

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ing officer for the purpose of being deposited in the box is a duty which the voter must perform on pain of forfeiting his vote.

(*i*) The ballot is in the first instance designed for persons who are able to read, able to see, and physically able to mark the ballot paper. Where these conditions all exist there is not much difficulty in preserving the secrecy deemed necessary to the free exercise of the ballot. But where these conditions do not exist, still the elector is to have the right to vote. The right, however, can only be exercised in the mode prescribed by this section. See *Halton Election*, 1 H. E. C. 283; *Prescott Election*, 1 E. C. 88.

cipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall return the ballot paper to the clerk of the municipality, as hereinafter directed. (*j*) 46 V. c. 18, s. 149.

Who may be present at polling place.

151. During the time appointed for polling no person shall be entitled or permitted to be present in a polling place, other than the officers, candidates, clerks or agents authorized to attend at the polling place, and such voter as is for the time being actually engaged in voting; (*k*) it shall at all times be lawful for the deputy-returning officer to have present or to summon to his assistance in the polling place, any police constable or peace officer, for the purpose of maintaining order, or of preserving the public peace, or preventing any breach thereof, or of removing any person who may, in the opinion of the deputy-returning officer, be obstructing the polling or wilfully violating any of the provisions of this Act. (*l*) 46 V. c. 18, s. 150.

Counting the votes.

152. Immediately after the close of the poll in every polling place, (*ll*) the deputy-returning officer shall, in the presence of the poll clerk (if any) and of such of the candidates or of their agents as may then be present, open the ballot box, and proceed to count the votes as follows :—

(*j*) The number of ballot papers given by the deputy returning officer to voters, should correspond with the number of marked papers deposited in the ballot box. If this were not so there would not be much check as against dishonest practices on the part of a returning officer. But as a voter may by inadvertence so use his ballot paper as to render it useless for the purpose of his vote, he ought not for that cause to be deprived of his vote. Hence provision is made by this section for the issue in such a case of a second ballot paper to the voter, subject to the checks declared. It does not seem clear whether in case the voter spoilt the second ballot paper he could obtain a third.

(*k*) This section excludes from the polling place all persons except "the officers, candidates, clerks or agents authorized to attend at such polling place, and such voter as is for the time being actually engaged in voting." The candidate has as much right to be present as an officer, clerk or agent authorized to attend the polling place, although the fact of his presence may produce some of the mischiefs which it was the design of the Legislature when enacting vote by ballot, to remove. See *Clementson* v. *Mason*, L. R. 10 C. P. 209.

(*l*) If the deputy returning officer, without justification, forcibly remove a person who has a right to be present, he may be sued for the trespass. *Clementson* v. *Mason*, L. R. 10 C. P. 209.

(*ll*) The first duty is to certify on the voter's list the number of persons who have voted. See note *d* to s. 155.

1. He shall examine the ballot papers and any ballot paper which has not on its back the name or initials of the deputy-returning officer, (*m*) or on which more votes are given than the elector is entitled to give, (*n*) or on which anything, except the initials or name of the deputy-returning officer on the back, is written or marked, by which the voter can be identified, shall be void, and shall not be counted (*o*) and any ballot paper on which votes are given for a greater number

Rejected ballots.

(*m*) Where the proper entries respecting the person claiming to vote have been made in the voters' list, it is the duty of the deputy returning officer under s. 143, to sign his name, or initials upon the back of the ballot paper. This is for the purpose of identifying it and preventing the use of fraudulent ballots. When the deputy returning officer has done his duty in identifying the ballots, as the statute directs, he must reject ballots not having on their back his name or initials. But where the deputy returning officer has himself neglected his duty by omitting to write his name or initials on the back of the ballot papers, it would not be right on a scrutiny, in the absence of some imputation of fraud, to reject all ballots not having on the back the name or initials of the deputy returning officer. *The Monck Case*, 1 H. E. C. 725. See also *The Bothwell Case*, 8 S. C. R. 676.

(*n*) When more votes are by the ballot paper given than the elector is entitled to give, it cannot be decided which, if any of them, are the proper votes. So that in such case the ballot paper is rejected. See *The North Victoria Case*, 1 H. E. C. 671.

(*o*) It is not declared that all ballots having on them anything except the name or initials of the deputy returning officer shall be rejected, but all such as have marks *by which the voter can be identified*. These words have, in similar Acts to the present caused much difficulty and some judicial conflict. See Rev. Stat. c. 9, sec. 106, sub-s. 2.

Formerly there was some conflict of opinion as to whether ballots marked otherwise than on the right hand side of the name of the candidate in the manner directed should be counted. See *The Athlone Case*, 2 O'M. & H. 186; *The Wigtown Case*, *Ib.* 215; *The Monck Case*, 1 H. E. C. 725; *The North Victoria Case*, 1 H. E. C. 671; *Woodward* v. *Sarsons*, L. R. 10 C. P. 733. Since these decisions the Act has been altered by adding the words in sec. 146 "or at any other place within the division which contains the name of such candidate."

In *The Wigtown Case*, 2 O'M. & H. 215, and *The Monck Case*, it was held that a ballot having on it two or three crosses opposite the name of the candidates ought to be rejected, but the contrary was held in *Woodward* v. *Sarsons*, and in *The Bothwell Case*, 8 S. C. R. 676.

In *The Wigtown Case*, 2 O'M. & H. 215 *The North Victoria Case*, and the *Monck Case*, it was held that ballot papers having a single stroke instead of a cross ought to be rejected but the contrary was held in *Woodward* v. *Sarsons*. But see *The South Wentworth Case*, 1 H. E. C. 531, and *The Bothwell Case*, 8 S. C. R. 676.

of candidates for any office than the voter is entitled to vote

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In *The North Victoria Case*, and in *Woodward* v. *Sarsons*, it was held that ballots having the cross with feet to it so as to make it look like the letter X ought not to be rejected.

In *The Queen's County Case*, 7 S. C. R. 247, it was held that ballots with a cross in the right place on the back of the ballot paper instead of on the printed side, and ballots marked with an *x* instead of a cross were invalid.

In the same case in ballot papers containing the names of four candidates, the following ballots were held good:

(1) Ballots containing two crosses, one on the line above the first name, and one on the line above the second name valid for the two first named candidates. (2) Ballots containing two crosses, one on the line above the first name, and one on the line dividing the second and third compartments valid for the first named candidate. (3) Ballots containing properly made crosses in two of the compartments of the ballot paper with a slight lead pencil stroke in another compartment. (4) Ballots marked in the proper compartment thus ✓.

In *The North Victoria Case*, it was held that ballots having a perfect cross and some additional mark ought to be rejected but the contrary was held in *The Monck Case*, and in *Woodward* v. *Sarsons*.

In *The North Victoria Case*, and in *Woodward* v. *Sarsons*, it was held that ballots not marked with a cross but having the name of the candidate or some letters or initials put in the place of the cross ought to be rejected.

In *The Wigtown Case*, 2 O'M. & H. 215, *The North Victoria Case*, and *The Monck Case*, it was held that crosses made with ink instead of with black lead pencil ought not to be rejected.

In *Woodward* v. *Sarsons*, it was held that a ballot paper having a pencil line through the name of the candidate and a cross opposite to the name of the other on the right hand side ought not to be rejected.

Certain ballot papers were objected to as having been imperfectly marked with a cross, or having more than one cross, or having an inverted V, or because the cross was not directly opposite the name of the candidate, there being only two names on the ballot paper, and a line drawn dividing the paper in the middle, but it was held that these ballots were valid. *The Bothwell Case*, 8 S. C. R. 676. *Per Ritchie C. J.*:—"I find it impossible to lay down a hard and fast rule by which it can be determined whether a mark is a good or a bad cross. I think that wherever the mark evidences an attempt or intention to make a cross, though the cross may be in some respects imperfect, the ballot should be counted, unless from the peculiarity of the mark made it can be reasonably inferred that there was not an honest design simply to make a cross, but there was also an intention so to mark the paper that it could be identified, in which case the ballot should be rejected. But if the mark made indicates no design of complying with the law, but on the contrary, a clear intent not to mark with a cross as the law directs, as, for instance, by making a straight line or round O, then such non-compliance with the law renders the ballot null. The irresistible presumption from such a

for, shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for.

Deputy-returning officer to note objections taken to ballot papers at the counting of the same.

2. The deputy-returning officer shall take a note of any objection made by a candidate, his agent, or any elector authorized to be present, (*p*) to any ballot paper found in the ballot box, and shall decide any question arising out of the objection.

And number, objection and ballot paper to correspond.

3. Every objection shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the deputy-returning officer. (*q*).

Endorsing ballot papers.

4. The deputy-returning officer shall endorse, "*Rejected*" on any ballot paper which he rejects as invalid, and shall endorse "*Rejection objected to*," if any objection is made to his decision.

Statement.

5. The deputy-returning officer shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him, which shall be made under the several heads—

(*a*) Name or number of ward or polling subdivision and of the municipality and the date of election;

(*b*) Number of votes for each candidate;

(*c*) Rejected ballot papers.

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plain and wilful departure from the terms of the statute being that it was so marked for a sinister purpose." *Ib.* It is true that the declaration of nullity does not require that there should be absolute proof of a design or intention on the part of the voter to be identified, but it would be manifestly wrong to reject the ballot, where, from the mark made, no such intention can be reasonably inferred. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733.

(*p*) There does not seem to be any provision authorizing an elector to be present unless he is an agent. See sec. 151, and the first clause of this section. Only two agents for each candidate are entitled to be present at same time, s. 153.

(*q*) The directions contained in this and the next sub-section are for the purpose of enabling the Court or a Judge afterwards on a scrutiny to identify the ballots and decide on the propriety of their rejection or otherwise.

Statement to be signed.

6. Upon the completion of the written statement, it shall be forthwith signed by the deputy-returning officer, the poll clerk, if any, and such of the candidates or their agents as may be present, and desire to sign such statement. 46 V.c. 18, s. 151.

Agents entitled to be present.

153. No more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes. (*a*) 46 V. c. 18, s. 152.

Deputy-returning officer to give certificate of state of poll.

154. Every deputy-returning officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place, (*b*) a certificate of the number of votes given at that polling place for each candidate, and of the number of rejected ballot papers. (*c*) 46 V. c. 18, s. 153.

Deputy-returning officers' duties after votes are counted.

155—(1) Every deputy-returning officer shall, at the close of the poll, certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside, (*d*) and at the completion of the counting of votes after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal, and the seals of such agents of the candidate as desire to fix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the election, the name of the deputy-returning officer, and of the ward or polling subdivision and municipality,

(*a*) The statement of votes given for each candidate and of the rejected ballot papers;

(*a*) This does not exclude the candidate himself, see note *k* to sec. 151 and sec. 172.

(*b*) This it is presumed means authorized to attend on behalf of a candidate at the election.

(*c*) No form of certificate is given. It need only state :

1. The number of votes given at the polling place for each candidate.

2. The number of rejected ballot papers.

Although not in words required to be signed by the returning officer giving it, as it is a certificate it certainly should be signed.

(*d*) The certificate made necessary by this section is expressly required to be under the signature of the deputy returning officer. It must be given by the deputy returning officer at the particular polling place where he presided, and must contain a statement in full words, not in figures, (a precaution against fraud) of the total number of persons who voted at the polling place. This statement should be made before the votes are counted.

(*b*) The used ballot papers which have not been objected to and have been counted;

(*c*) The ballot papers which have been objected to, but which have been counted by the deputy-returning officer;

(*d*) The rejected ballot papers;

(*e*) The spoiled ballot papers;

(*f*) The unused ballot papers;

(*g*) A statement of the number of voters whose votes are marked by the deputy-returning officer under the heads, "Physical incapacity," and "Unable to read," with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot-box.

Declaration by deputy-returning officer as to use of voters list.

(2) Before returning the voters' list to the clerk of the municipality, the deputy-returning officer shall make and subscribe before such clerk or a Justice of the Peace or the poll clerk, his declaration under oath that the voters' list was used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made; which declaration shall be in the form of Schedule G to this Act, and shall thereafter be annexed to the voters' list, (*e*) and such voters' list and declaration may be inspected at any time in presence of the clerk by any elector of the municipality.

Packets of ballot papers, &c., to be delivered to the clerk of municipality.

(3) If the clerk of the municipality is not himself performing the duties of deputy-returning officer, the deputy-returning officer shall forthwith deliver such packets personally to the clerk of the municipality; and if he is unable to do so, owing to illness or other cause, he shall deliver such packets to a person chosen by him for the purpose of delivering the same to the clerk; and shall mention on the outside of the cover of each of the packets the name of the person to whom the same had been so delivered, and shall take a proper receipt therefor; he shall also forthwith return the ballot box to the clerk of the municipality.

Statement to be made by deputy-returning

(4) The packets shall be accompanied by a statement made by the deputy-returning officer, showing the number

(*e*) The declaration made necessary as a security for the good faith of the deputy returning officer, must not only be made by him, but subscribed by him under oath.

officer on return of ballot papers, &c.

of ballot papers entrusted to him, and accounting for them under the heads of (1) Counted; (2) Rejected; (3) Unused; (4) Spoiled; (5) Ballot Papers given to voters who afterwards returned the same, declining to vote; and (6) Ballot Papers taken from the polling place; (*f*) which statement shall give the number of papers under each head, and is in this Act referred to as the "Ballot Paper Account."

If dispute as to result arises, how to be settled.

(5.) If the deputy-returning officer and one or more of the candidates or of the agents of the candidates present at the examination and counting of the ballot papers are unable to agree as to the written statement to be made by the deputy-returning officer, the packages of ballot papers shall be broken open by the clerk of the municipality, in the presence of the deputy-returning officer and such of the candidates or of their agents as may be present on the day succeeding the polling day, at an hour and place to be appointed, and of which they have been notified by the deputy-returning officer unless the distance necessary to be travelled is such that the appointed place cannot be reached on the day following the poll, in which case a reasonable time shall be allowed, and no more, for the purpose of coming before the clerk of the municipality; and the clerk of the municipality, after examining the ballot papers, shall finally determine the matter in dispute, and sign the written statement hereinbefore mentioned; (*g*) and the clerk of the municipality shall forthwith, in the presence of the deputy-returning officer and such of the candidates or of their agents as may then be present, securely seal up the ballot papers which have been examined by him into their several packages as before. 46 V. c. 18, s. 154.

Clerk to cast up votes and declare who is elected, &c.

156. The clerk of the municipality, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, without opening any of the sealed packets of ballot papers, cast up the number of votes for each candidate from such statements;

(*f*) The object of this account is to enable the clerk of the municipality who gave out the ballot papers to make a comparison between the ballots given out and those returned so as to detect the undue use if any made of any of the ballot papers.

(*g*) The clerk is to finally determine the matter in dispute mentioned, but this determination cannot bind any Court or Judge before whom the election may afterwards be contested and a scrutiny had for the purposes of the contest.

and shall at the town hall, or, if there is no town hall, at some other public place, at noon on the day following the return of such ballot papers and statements, publicly declare to be elected the candidate or candidates having the highest number of votes, (*h*) and shall also put up in some conspicuous place a statement under his hand shewing the number of votes for each candidate. (*i*) 46 V. c. 18, s. 155.

In case of a tie, clerk to have a casting vote.

157—(1) In case it appears, upon the casting up of the votes as aforesaid, that two or more candidates have an equal number of votes, the clerk of the municipality or other person appointed by by-law to discharge his duties of clerk in his absence or incapacity through illness, and whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so as to decide the election. (*j*)

But otherwise not to vote.

(2) Except in such case, no clerk of the municipality shall vote at any municipal election held in his municipality. See sec. 319.

Deputy-returning officer may vote if qualified.

(3) All deputy-returning officers and persons employed as deputy-returning officers and poll clerks, if otherwise qualified, shall be entitled to vote. 46 V. c. 18, s. 156.

Election not commenced, or interrupt-

158. In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted

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(*h*) The simple duty of the clerk is to declare elected "the candidate or candidates having the highest number of votes." He has no power to decide as to the qualification of any candidates to be elected. This must be left for the decision of a competent tribunal, see *Reg.* v. *Ledgard*, 8 A. & E. 535.

(*i*) There is no power to amend the statement after it has been once put up or to put up an amended statement, see *Reg.* v. *Leeds*, 11 A. & E. 512. If he makes a mistake as to the number of ballots, this mistake must be corrected by the Court or a Judge, see *Reg. ex rel. Andrews* v. *Collins*, 1 Q. B. D. 336.

(*j*) Where there is an office to be filled and two candidates have an equal number of votes, neither can fill it without some provision being made for a casting vote. The general rule is to negative any question on which there is an equality of votes, see section 241. But for reasons stated an exception is here created in the case of an election, see *Reg. ex rel. Bulger* v. *Smith*, 4 U. C. L. J. 18; *Reg. ex rel. Pollard* v. *Prosser*, 2 P. R. 330; *Reg. ex rel. Hume* v. *Lutz*, 7 U. C. L. J. 103. This section was held not applicable to the case of voting on a by-law. *Canada Atlantic R. W. Co.* v. *Cambridge*, 14 A. R. 299, reversing *S. C.* 11 O. R. 392. The point is made clear by sec. 319.

ed by reason of riot, etc., to be resumed.

after being commenced and before the lawful closing thereof, the returning officer, or deputy-returning officer, as the case may be, shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day, if necessary, for four days, until the poll has been opened without interruption, and with free access to voters for twelve hours in all, or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. (*k*) 46 V. c. 18, s. 157.

If election is prevented for four days, poll book is to be returned, and a new election ordered.

159. In case the election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the said twelve hours, the returning officer or deputy-returning officer, as the case may be, shall not return any person as elected, but shall return his voters' list and ballot papers on the following day to the head of the municipality, certifying the cause of there not having been an election; (*l*) and a new election shall take place, and the head of the municipality shall forthwith issue his warrant therefor. (*m*) 46 V. c. 18, s. 158. *See also sec.* 181.

(*k*) It is necessary that during the hours of polling the electors shall have free access to the polling place. *Reg. ex rel. Davis* v. *Wilson* 3 U. C. L. J. 165.

(*l*) "If rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law, for the common law provides that an election should be free in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation." *Nottingham Case*, 1 O'M. & H. 245; see also *The Stafford Case*, *Ib.* 234, and *The Drogheda Case*, *Ib.* 252.

(*m*) The new election is to take place in case the election has not, within four days from the day on which it commenced, or should have commenced, been kept open twelve hours, and the returning officer or deputy-returning officer as the case may be has not returned any person as elected, but has certified the cause of the failure. If such officer should so far forget his duty as to return any of the candidates elected, the election would no doubt be set aside. *Reg. ex rel. Davis* v. *Wilson*. 3 U. C. L. J. 165. Where it was sworn that intending voters for an unsuccessful candidate were obstructed in approaching the polling place by a crowd controlled by one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election was set aside. *Reg. ex rel. Gibbs* v. *Branighan*, 3 U. C. L. J. 127. The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he participated in the improper conduct for which the election is set aside. *Reg. ex rel. Davis* v. *Wilson*, 3 U. C. L. J. 165.

160. When a poll has been duly held in each of such wards or polling subdivisions, and the ballot papers and statements hereby directed to be returned to the clerk have been so returned to him, the clerk shall, without opening any of the sealed packets of ballot papers, cast up from said statements the number of votes given for each candidate for any office in respect whereof the election has not been previously declared, together with the votes appearing by the statements previously returned for other wards to be given for the candidate, and shall at noon on the next day, at the town hall, or if there is no town hall, at some other public place, publicly declare to be elected the candidate or candidates having the largest number of votes polled. (*n*) 46 V. c. 18, s. 159. Declaration of election—duty of the clerk.

161. The person or persons so elected shall make the necessary declarations of office and qualification and assume office accordingly. (*o*) 46 V. c. 18, s. 160. Declaration and assumption of office.

DIVISION VI.—MISCELLANEOUS PROVISIONS.

Disposition of Ballot Papers. *Sec.* 162.
Inspection of Ballot Papers. *Sec.* 163.
Re-count of Votes. *Secs.* 163-165.
Production of Documents, how far evidence, etc. *Sec.* 166.
Offences and Penalties. *Secs.* 167, 168.
Secrecy of Proceedings at polling places. *Secs.* 169-171.
Candidates may do Agents' duty. *Sec.* 172.
Non-attendance of Agents. *Sec.* 173.
Computation of time. *Sec.* 174.
Technical objections not to prevail. *Sec.* 175.
Expenses of Clerk of Municipality, etc. *Sec.* 176.

162. The clerk of the municipality shall retain for one month all ballot papers received by him or forwarded to him in pursuance of this Act by deputy-returning officers, (*p*) and then, unless otherwise directed by an order of a Court Ballot papers how disposed of.

(*n*) See notes to sec. 156.

(*o*) Acceptance of office when the person elected is qualified to be elected is obligatory, see section 277.

(*p*) This is with a view to a contest, if any be intended as to the validity of the election.

or Judge of competent jurisdiction, shall cause them to be destroyed in the presence of two witnesses whose declaration that they have witnessed the destruction of such papers shall be taken before the head of the municipality, and filed amongst the records of the municipality by the said clerk. (*q*) 46 V. c. 18, s. 161.

Ballot papers to be inspected only by order of a Court or Judge.

163.—(1) No person shall be allowed to inspect any ballot papers in the custody of the clerk of the municipality except under the order of a Court or Judge of competent jurisdiction, to be granted by the Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers shall be obeyed by the clerk of the municipality. (*r*)

Order may be subject to conditions.

(2) The order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Court or Judge making the order thinks expedient. (*s*)

Recount of votes by the County Judge.

(3) In case it is made to appear, on the affidavit of a credible person, to the County Judge of the county in which the municipality is situated, at any time within fourteen days from the time the ballot papers are received by the clerk of the municipality, that a deputy-returning officer at any election in such municipality for mayor, alderman, reeve,

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(*q*) After a month, it may be said, if there be no order to the contrary from the Court or a Judge, that the ballot papers have served their purpose and that their further retention would serve no good purpose. They are to be destroyed in the presence of two witnesses whose declaration in writing that they have witnessed the destruction is to be filed among the records of the municipality.

(*r*) One object of the ballot is secrecy. But this is not the only object. Purity of election is another object. Where to attain purity of election it is necessary that an inspection of the ballot papers should be had, it may be had under the circumstances, mentioned in this section. These are when required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, see *Reg.* v. *Beardsall*, 34 L. T. N. S. 661, or for the purpose of a petition questioning an election or return, see *In re Election of Reeve of Edwardsburg* 13 U. C. L. J. N. S. 44. In either of these cases the order for inspection may be made by the Court or a Judge of competent jurisdiction.

(*s*) A form of order for inspection will be found in *Reg.* v. *Beardsall*, 34 L. T. N. S. 661.

deputy-reeve, councillor, or water commissioner, in counting the votes has improperly counted or rejected any ballot papers at such election, the County Judge may appoint a time to re-count the votes, and shall give notice in writing to the candidates of the time and place at which he will proceed to re-count the same.

Deposit by applicant.

(4) At the time of the application for a re-count, the applicant shall deposit with the clerk of the County Court the sum of $25 as a security for the payment of costs, charges and expenses that may become payable by the applicant, and the said sum shall not be paid out by the clerk without the order of the Judge.

Who may be present at re-count.

(5) The County Judge, the clerk of the municipality with the ballot boxes, and each candidate and his agent appointed to attend the re-count of votes, and no other person except with the sanction of the County Judge shall be present at the re-count of the votes.

Opening of packets.

(6) At the time and place appointed the County Judge shall proceed to re-count all the votes or ballot papers received by the clerk of the municipality, and shall in the presence of the parties aforesaid, if they attend, or in the presence of such of them as do attend, open the sealed packets containing (*a*) the used ballot papers which have not been objected to and have been counted; (*b*) the ballot papers which have been objected to, but which have been counted by the deputy-returning officer; (*c*) the rejected ballot papers; (*d*) the spoiled ballot papers; (*e*) the unused ballot papers; and in re-counting the votes care shall be taken that the mode in which any particular voter has voted shall not be discovered.

The re-count to be a continuous proceeding.

(7) The County Judge shall, as far as practicable, proceed continuously with the re-count of the votes, allowing only time for refreshment, excluding only Sundays and on other days (except so far as he and the parties aforesaid agree) the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time the County Judge shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of the papers and documents.

Procedure on re-count

(8) The County Judge shall proceed to re-count the votes as follows :

1. He shall examine the ballot papers.

2. Any ballot paper on which votes are given to more candidates then are to be elected, or on which anything except the name or initials of the deputy-returning officer on the back is written or marked by which the voter can be identified, shall be void and shall not be counted, but a ballot paper on which votes are given for a greater number of candidates for any office than the voter is entitled to vote for shall be void as regards all the candidates for such office, but shall be good as regards the votes for any other offices in respect to which the voter has not voted for more candidates than he is entitled to vote for.

3. The County Judge shall take a note of any objection made by a candidate or by his agent to any ballot paper found in the ballot box, and shall decide any question arising out of the objection, and the decision of the County Judge shall be final. (*t*)

4. The County Judge shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him, which statement shall be made under the several heads following :

(*a*) Name of municipality ;

(*b*) Names of the candidates ;

(*c*) Number of votes for each candidate ;

(*d*) Papers wanting signature or initials of deputy-returning officer ;

(*e*) Papers rejected as voting for more candidates than entitled to ;

(*f*) Papers rejected as having a writing or mark by which voters could be identified ;

(*g*) Papers rejected as unmarked or void for uncertainty.

(*t*) Final, that is regards proceedings under this section. Other remedies are not interfered with. See sec. 164.

5. Upon the completion of the re-count, or as soon as he has thus ascertained the result of the poll, the County Judge shall seal up all the ballot papers in separate packets, and shall forthwith certify the result to the clerk of the municipality, who shall then declare to be elected the candidate having the highest number of votes; and in case of an equality of votes, the clerk of the municipality shall have the casting vote as provided in section 157 of this Act. 46 V. c. 18, s. 162.

Existing remedies not affected.

164. Nothing in the preceding section contained shall destroy or prevent any remedy which any person may now have under or by *quo warranto* or otherwise. 46 V. c. 18, s. 163.

Costs of application.

165.—(1) All costs, charges and expenses of, and incidental to an application for a re-count and to the proceedings consequent thereon shall be defrayed by the parties to the application in such manner and in such proportion as the Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may in the opinion of the Judge have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the applicant or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Taxation of costs.

(2) The costs may be taxed in the same manner, and according to the same principles as costs are taxed between solicitor and client in the County Court.

Recovery of costs.

(3) The payment of any costs ordered to be paid by the Judge may be enforced by an execution against goods and chattels, to be issued from any County Court, upon filing therein the order of the Judge and a certificate shewing the amount at which the costs were taxed and an affidavit of the non-payment thereof. 46 V. c. 18, s. 164.

Production of documents and endorsements on ballot papers, evidence for certain papers.

166. Where a rule or order is made for the production by the clerk of the municipality, of any document in his possession relating to any specified election, the production of the document by the clerk, in such manner as may be directed by the rule or order, shall be conclusive evidence that the document relates to the specified election: and any endorsement appearing on any packet of ballot papers pro-

duced by the clerk shall be evidence of such papers being what they are stated to be by the endorsement. 46 V. c. 18, s. 165.

Offences.

167.—(1) No person shall—

(*a*) Without due authority supply any ballot paper to any person; or

(*b*) Fraudulently put into any ballot box any paper other than the ballot paper, which he is authorized by law to put in; or

(*c*) Fraudulently take out of the polling place any ballot paper; or

(*d*) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election. 46 V. c. 18, s. 166 (1).

(*e*) Apply for a ballot paper in the name of some other person, whether that name is of a person living or dead, or of a fictitious person, or having voted once and not being entitled to vote again at an election, shall apply at the same election for a ballot paper in his own name. This provision is not to be construed as including a person who applies for such ballot paper believing that he is the person intended by the name entered on the voters' list in respect of which he so applies for a ballot paper. 51 V. c. 28, s. 12.

(2) No person shall attempt to commit any offence specified in this section.

Penalty by imprisonment.

(3) A person guilty of any violation of this section shall be liable, if he is the clerk of the municipality, to imprisonment for any term not exceeding two years, with or without hard labour; and if he is any other person, to imprisonment for a term not exceeding six months, with or without hard labour. (*u*) 46 V. c. 18, s. 166 (2, 3).

Money penalty for offences.

168. Every officer and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of

(*u*) While the Local Legislature has no general power under the B. N. A. Act. to legislate as to crime or criminal procedure, it has power to punish by fine or imprisonment with a view of enforcing the laws within its jurisdiction *Reg.* v. *Boardman* 30 U. C. Q. B. 553. It is not in the section declared whether procedure shall be by indictment or otherwise, see *Reg* v. *Snider*, 23 U. C. C. P. 330; *Wilde* v. *Bowen*, 37 U. C. Q. B. 504.

the sections 119 to 167 inclusive, of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved (*v*) by such misfeasance, act or omission, a penal sum of $400. (*w*) 46 V. c. 18, s. 167.

Maintaining secrecy of proceedings at polling places.

169.—(1) Every officer, clerk and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place.

(2) No officer, clerk or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(3) No officer, clerk, agent or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate or candidates for whom any voter at such polling place is about to vote or has voted.

(4) Every officer, clerk and agent in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the candidate or candidates for whom any vote is given in any particular ballot paper.

(5) No person shall, directly or indirectly, induce a voter to display his ballot paper after he has marked the same, so as to make known to any person the name of any candidate or candidates for or against whom he has marked his vote.

Penalty for contravening this section.

(6) Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary

(*v*) In an action by a defeated candidate against a deputy returning officer, there being no allegation that the plaintiff lost his election or any votes or suffered any personal grievance by the acts complained of, it was held on demurrer that the plaintiff was not by reason only of being a candidate, a "person aggrieved" within this section, and further, that an action for this penalty would only lie for a breach of sects. 119-167. *Atkins* v. *Ptolemy*, 5 O. R. 366.

(*w*) The liability to a penalty of $400 only arises in the case of an officer or clerk guilty of *wilful* misfeasance or of a wilful act or omission in contravention of the Act. The section is inapplicable to cases of mere neglect, see secs. 225, and 227 of the Assessment Act and notes thereto.

Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. (*x*) 46 V. c. 18, s. 168.

Statutory declaration of secrecy.

170. The clerk of the municipality, and every officer, clerk or agent, authorized to attend a polling place or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy in the presence, if he is the clerk of the municipality, of a Justice of the Peace, and if he is any other officer, or clerk, in the presence of a Justice of the Peace or of the clerk of the municipality; and if he is an agent of a candidate, in the presence of a Justice of the Peace or of the clerk of the municipality, or of the deputy-returning officer at whose polling place he is appointed agent; and such statutory declaration of secrecy shall be in the form mentioned in Schedule H to this Act, or to the like effect. 46 V. c. 18, s. 169.

No one compellable to disclose his vote.

171. No person who has voted at an election shall in any legal proceeding to question the election or return, be required to state for whom he has voted. (*y*) 46 V. c. 18, s. 170.

Candidates may undertake duties of an agent.

172. A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act be authorized to attend; (*z*) but no candidate shall be present at the marking of a ballot by an incapacitated voter, or a voter unable to read under section 149. 46 V. c. 18, s. 171.

Expressions in ss. 119-172 referring to agents.

173. When in the sections of this Act numbered from 119 to 172 inclusive expressions are used, requiring or authorizing any act or thing to be done, or inferring that any act or thing is to be done in the presence of the agents of the

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(*x*) See note *u* to sec. 167.

(*y*) Secrecy is the privilege of the voter. He cannot in any legal proceeding to question the election, be compelled to state for whom he has voted. But there is nothing to restrain him from stating for whom he voted if he see fit voluntarily to do so. His doing so voluntarily is certainly not made illegal by the Act. See *Bernard* v. *Brillon*, M. L. R. 1 S. C. 121.

(*z*) It would seem that a candidate whether acting in the place of his agent or not has a right to be present (see also sec. 151) and so long as he properly conducts himself cannot be ejected from the polling place, see *Clementson* v. *Mason*, L. R. 10 C. P. 209.

candidate, such expressions shall be deemed to refer to the presence of such agents of the candidates as are authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agent at such time and place shall not, if the act or thing is otherwise duly done, invalidate in anywise the act or thing done. (*a*) 46 V. c. 18, s. 172.

Non-attendance of agents

174. In reckoning time for the purposes of the said sections, Sunday and any day set apart by any act of lawful authority for a public holiday, fast or thanksgiving, shall be excluded; and where anything is required by this Act to be done on a day which falls on such days, such things may be done on the next juridical day; but nothing in this section contained shall extend or apply to the days fixed by this Act for the nomination or election of candidates for the offices of mayor and aldermen in cities, and mayor, reeve, deputy-reeves and councillors in other municipalities. (*b*) 46 V. c. 18, s. 173.

Public holidays &c. excluded in reckoning time under ss. 119-172, except for nomination and election of mayors, &c.

175. No election shall be declared invalid by reason of a non-compliance with the rules contained in this Act as to the taking of the poll or the counting of the votes, or by reason of any mistake in the use of the forms contained in the Schedules to this Act, or by reason of any irregularity, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, (*c*) and that such non-compliance or

No election to be invalid for want of compliance with principles of Act where result not affected.

(*a*) The attendance of agents of the candidates is for the purpose of satisfying the candidates of the good faith of the proceedings. But if candidates do not appoint agents or if their agents do not see fit to attend, it would be absurd, if a proceeding, in all respects honest and correct, were thereby invalidated. The object of this section is to prevent the drawing of any such inference from the omission of authorized agents to attend.

(*b*) The effect of excluding Sunday, public holidays, fast or thanksgiving days from being reckoned as days for the purposes of the sections, is to enable acts which would otherwise require to be done on such day to be lawfully done on the next juridical day. See *In re Poole Election*, L. R. 9 C. P. 425; *In re West Toronto Election*, 31 U. C. Q. B. 409.

(*c*) Nothing can be more difficult than to say what are the principles of a Statute comprehending together with the schedules nearly 700 clauses. One principle is that the voting should be secret. Another principle is that the electors should have a fair opportunity of recording their votes. See *per* Grove, J., in the *Hackney Case*, 31 L. T. N. S. 69, 71. An election should be declared void if the

mistake or irregularity did not affect the result of the election. (*d*) 46 V. c. 18, s. 174.

Expenses incurred by officers to be refunded.

176. The reasonable expenses incurred by the clerk of the municipality and by the other officers and clerks for printing, providing ballot boxes, ballot papers, materials for marking ballot papers, polling compartments, transmission of the packets required to be transmitted by this Act, and reasonable fees and allowances for services rendered under this Act, shall be paid to the clerk of the municipality by the treasurer of the municipality, and shall be distributed by the clerk of the municipality to the several persons entitled thereto. (*e*) 46 V. c. 18, s. 175.

DIVISION VII.—VACANCIES IN COUNCIL.

By Crime, Insolvency, or Absence. *Sec.* 177.
Quo Warranto proceedings. *Sec.* 178.
By Resignation. *Secs.* 179, 180.
How filled,—New Elections. *Secs.* 180-182, 185.
Seat held for residue of term. *Sec.* 183.
Not to prevent organization of Council. *Sec.* 184.
In certain cases Council to fill. *Sec.* 186.

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tribunal which is asked to avoid it is satisfied that there was no real electing at all, or that the election was not really conducted under the subsisting election laws, see *per* Coleridge, C. J., in *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, 743.

(*d*) It is now a canon of election law that an election is not to be set aside for a mere informality or irregularity which cannot be said in any manner to have affected the result of the election. *Reg.* v. *Rector of St. Mary, Lambeth*, 8 A. & E., 356; *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218; *In re Monk Election*, 32 U. C. Q. B. 147; *Reg.* v. *Plenty*, L. R. 4 Q. B. 346; *Reg.* v. *Ward*, L. R. 8 Q. B. 210; *Reg.* v. *Cousins*, 28 L. T. N. S. 116; *Reg. ex rel. Harris* v. *Bradburn*, 6 P. R. 308; *Reg. ex rel. Preston* v. *Touchburn*, *Ib.* 344; *Shaw* v. *Thompson*, 3 Ch. D. 233. But where it appears that the irregularity is of such character and magnitude that it may have affected the result, the election ought to be set aside: *Hackney Election*, 31 L. T. N. S. 69; *Woodward* v. *Sarsons*, L. R. 10 C. P. 743; *Mather* v. *Brown*, 1 C. P. D. 596; *In re Johnson* v. *Lambton*, 40 U. C. Q. B. 297.

(*e*) The Act does not contain any provision for the taxation of the amount of these services. Their reasonableness therefore must in the first instance be judged of by the treasurer of the municipality. In the event of a difference between him and the person who performed the services as to their value the amount can only be settled by action or arbitration.

Seats to become vacant by crime, insolvency, absence, etc.

177. If, after the election of a person as member of a council, he is convicted of felony or infamous crime, or becomes insolvent within the meaning of the Insolvent Acts, or applies for relief as an indigent debtor, or remains in close custody, or assigns his property for the use of his creditors, or absents himself from the meetings of the council for three months without being authorized so to do by a resolution of the council entered in its minutes, his seat in the council *(f)* shall thereby become vacant, *(g)* and the council shall declare the seat vacant, and order a new election. *(h)* 46 V. c. 18, s. 176.

(f) The contingencies which, under this section, will have the effect of vacating a seat in the council are:

1. Being convicted of felony or infamous crime.

2. Becoming insolvent within the meaning of the Insolvent Acts. See *Aslatt* v. *Southampton* (*Mayor &c.*), 50 L. J. Ch. 31.

3. Applying for relief as an indigent debtor.

4. Remaining in close custody.

5. Assigning property for the use of creditors.

6. Absence for three months from the council without leave by resolution entered in the minutes of the council. As to the time from which the three months is to be computed, see *Mearns* v. *Petrolia*, 28 Grant 98.

The Municipal Act of 1866, made the return of *nulla bona* against his goods, a good ground for vacating the seat of a member of a municipal council, see *In re Wood*, 26 U. C. Q. B. 513.

(g) As to the meaning of the words, "shall thereby become vacant," &c., see *Rex* v. *Oxford*, 6 A. & E. 349; *Reg.* v. *Leeds*, 7 A. & E. 963; *Hardwick* v. *Brown*, L. R. 8 C. P. 406.

(h) There must be an actual vacancy before a new election can be ordered. *Price* v. *Baker*. 13 Am. 346. An anticipated vacancy, or a resignation to take effect at a future time, is no ground for ordering a new election. *Lindsay* v. *Luckett*, 20 Texas, 516; *Biddle* v. *Willard*, 10 Ind. 62; *People* v. *Wetherell*, 14 Mich. 48. See also *Colt* v. *Bishop of Coventry*, Hob. 150; *Owen* v. *Stainoe*, Skin. 45; Glover on Municipal Corporations, 216. "An existing office without an incumbent is vacant, whether it be a new or an old one," Per Stuart, J., in *Stocking* v. *State*, 7 Ind. 326; see also *Collins* v. *State*, 8 Ind. 344. Where the office becomes vacant, through any other contingency than death, and the person whose seat is vacant insists on holding it, the proper remedy against him is *quo warranto* procedure and not a writ of mandamus on the mayor to hold a new election, *Reg.* v. *Cornwall*, 25 U. C. Q. B. 293; *Reg.* v. *Rowley*, 3 Q. B. 143, *S. C.*, 6 Q. B. 668; *Reg.* v. *Rippon*, 1 Q. B. D. 217. But it would appear that in such a case the summary procedure given by this Act, in the nature of a *quo warranto*, cannot be adopted. *Reg. ex rel. McGouverin* v. *Lawlor*, 5 P. R. 208. The expensive and dilatory proceeding authorized by the

Quo warranto proceedings on omitting to vacate seat.

178. In the event of a member of a municipal council forfeiting his seat at the council or his right thereto, or of his becoming disqualified to hold his seat, or of his seat becoming vacant by disqualification or otherwise, he shall forthwith vacate his seat, and in the event of his omitting to do so at any time after his election, proceedings by *quo warranto* to unseat such member, as provided by sections 187 to 208, both inclusive, of this Act, may be had and taken, and such sections shall, for the purposes of such proceedings, apply to any such forfeiture, disqualification or vacancy. (*i*) 46 V. c. 18, s. 177.

Any member may resign with consent of majority of council.

179. Any mayor or other member of a council may, with the consent of the majority of the members present, to be entered on the minutes of the council, resign his seat in the council. (*k*) 46 V. c. 18, s. 178.

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statute of Anne would therefore have to be adopted. See *Reg. ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.

(*i*) Until 1874 there was no more in the Municipal Act than the simple declaration that, on the happening of the events mentioned, the seat should become vacant. No mode was provided for the removal of the person whose seat was declared vacant, except in the case of a disqualification to hold the seat at the time of the election, and an application made by summons in the nature of a *quo warranto* within four weeks after the acceptance of office, or six weeks after the election. See *Reg. ex rel. McGouverin* v. *Lawlor*, 5 P. R. 208. By the Act 37 Vict. c. 16, sec. 6, the needed amendment of the law was supplied, and this was the origin of the above section.

(*k*) A resignation implies that the person resigning has been elected to the office which he resigns, and has accepted that office. *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; *Hardwick* v. *Brown*, L. R. 8 C. P. 406; *Miller* v. *Supervisors*, 25 Cal. 93. Where the person elected instead of accepting office refuses office, he may, under certain circumstances, disclaim even before proceedings are taken to unseat him. Sec. 202. The right of a member of a municipal corporation to resign in the absence of express provision authorizing it, has been doubted. *Reg.* v. *Tidderley*, 1 Sid. 14, Com. Dig. title "Franchise," F. 30; *Rex* v. *Rippon*, 1 Ld. Rayd. 563; *Reg.* v. *Lane*, 2 Ld. Rayd. 1304; see also *State* v. *Ferguson*, 31 N. J. (2 Vroom.) 107; *Lewis* v. *Oliver*, 4 Abb. Pr. 121; *People* v. *Porter*, 6 Cal. 26; *Gates* v. *Delaware County*, 12 Iowa 405; *United States* v. *Wright*, 1 McLean 509. In 2 Roll. Ab. 456, it is said that an alderman, with the assent of the corporation, may resign his office in the corporation, and that the corporation may accept the resignation as of right. Where the Act which sanctions a resignation prescribes the mode, that mode must be followed. *Rex* v. *Hughes*, 5 B. & C. 886; *Rex* v. *Rippon*, 1 Ld. Rayd. 563; *Rex* v. *Payne*, 2 Chitty 367; *Reg.* v. *Morton*, 4 Q. B. 146. Where no particular mode is specified, the resignation need not be in writing or other set form. *Rex* v. *Rippon*, 1 Ld. Rayd. 563; *Reg.* v. *Lane*,

180. The warden of a county may resign his office (*l*) by verbal intimation to the council while in session, or by letter to the county clerk if not in session, in which cases, and in case of vacancy by death or otherwise, the clerk shall notify all the members of the council, and shall, if required by a

Resignation of warden provided for.

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2 Ld. Rayd. 1304; see *Jenning's Case*, 12 Mod. 402; *Reg.* v. *Gloucester*, Holt 450; *Van Orsdall* v. *Hazard*, 3 Hill (N. Y.) 243; *State* v. *Allen*, 21 Ind. 516; *People ex rel. Hanrahan* v. *Metropolitan Police Board*, 26 N. Y. 316. A warden may resign by "verbal intimation to the council while in session," or "by letter to the county clerk, if not in session." Sec. 180. By this section the resignation can only be effective when "with the consent of the majority of the members present, to be entered on the minutes of the council." Until such consent be given and recorded, the offer to resign may be recalled. *Reg.* v. *Lane*, 2 Ld. Rayd. 1304; *Rex* v. *Rippon*, 1 Ld. Rayd. 563; *Jenning's Case*, 12 Mod. 402; *Hazard's Case*, 2 Roll 11; *Rex* v. *Patteson*, 4 B. & Ad. 9; see also *Van Orsdall* v. *Hazard*, 3 Hill. (N. Y.) 243; *State* v. *Ancker*, 2 Rich. (S. C.) 245. But see *State* v. *Hauss*, 13 Am. 384. In general, the right to accept a resignation is incidental to the power of appointment. *Rex* v. *Tidderley*, 1 Sid. 14; *Jenning's Case*, 12 Mod. 402; *Taylor's Case*, Popham 133; *Staniland* v. *Hopkins*, 9 M. & W. 178. When two offices are incompatible, they cannot be held together; therefore, the acceptance of the one is an implied resignation of the other. *Rex* v. *Patteson*, 4 B. & Ad. 9; *Rex* v. *Hughes*, 5 B. & C. 886; *sed qu.*, *Regents of the University* v. *Williams*, 9 Gill & Johns. (Md.) 365, and it matters not whether the second office is superior or inferior to the office first held. *Milward* v. *Thatcher*, 2 T. R. 87; see also *Rex* v. *Trelawney*, 3 Burr. 1615; *Crane* v. *Holland*, Cro. Car. 138. In such a case it is said that *quo warranto* is unnecessary. *Verrior* v. *Sandwich*, 1 Sid. 305; *Gabriel* v. *Clerke*, Cro. Eliz. 76; *Milward* v. *Thatcher*, 2 T. R. 87. Where the same authority confers both offices, there can be no difficulty on the point. *Arkwright* v. *Cantrell*, 7 A. & E. 565; *Rex* v. *Bond*, 6 D. & R. 333. If the first office cannot be resigned without the consent of some particular body, such as the council, under this section the acceptance of an incompatible office, in the gift of a different body, could not *per se* be held to vacate the first office. *Ib.* Offices are incompatible where, from considerations of public policy, the incumbent cannot be properly expected to discharge the duties of both. *Staniland* v. *Hopkins*, 9 M. & W. 178; *Rex* v. *Tizzard*, 9 B. & C. 418; *People ex rel. Whiting* v. *Carrique*, 2 Hill. (N. Y.) 93; *Bryan* v. *Cattell*, 15 Iowa 538. The office of treasurer and member of the council are incompatible. *Reg.* v. *Smith*, 4 U. C. Q. B. 322, and sec. 250. If, by any disregard of the law, accidental or otherwise, a person has been placed in the office who cannot by law hold it, things must take their course—the illegality must be ascertained and pronounced upon in a proper proceeding, instituted to try the question. *Reg.* v. *Smith*, 4 U. C. Q. B. 322. A treasurer of a municipality should not be permitted also to act as a bank agent. *Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.

(*l*) See preceding note.

Vacancies, how filled.

majority of the members of the county council, call a special meeting to fill such vacancy. (*m*) 46 V. c. 18, s. 179.

New elections provided for and mode of conducting same.

181. In case no return is made for one or more wards or polling subdivisions, in consequence of non-election, owing to interruption by riot or other cause, or in case a person elected to a council neglects or refuses to accept office, or to make the necessary declarations of office within the time required, (*n*) or in case a vacancy occurs in the council caused by resignation, death, judicial decision or otherwise, the head of the council for the time being, or in case of his absence, or of his office being vacant, the clerk, or in case of the like absence or vacancy in the office of the clerk, one of the members of the council, (*p*) shall forthwith, (*q*) by warrant under the signature of such head, clerk or member, if procurable, require the returning officers and deputy-returning officers appointed to hold the last election for the municipality, ward and polling subdivision respectively, or any other persons duly appointed to those offices, to hold a new election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. (*r*) 46 V. c. 18, s. 180.

Election of mayor on vacancy after 1st Dec.

182. In case the office of mayor of a city or town becomes vacant after the first day of December in any year, and an

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(*m*) The duty of the clerk in the first instance, is to notify the members of the council of the vacancy. He is only required to call a special meeting to fill the vacancy, "if required by a majority of the members of the council."

(*n*) Mere hesitation to take the oath until legal advice can be procured is not to be deemed a neglect or refusal within the meaning of this section. *In re Asphodel and Sargant*, 17 U. C. Q. B. 593.

(*p*) Some evidence must be adduced before the officer named, to satisfy him as to the vacancy, in order to make it obligatory upon him to act under this section. It is impossible to lay down any rule as to what amount or kind of evidence or information should be laid before him. *In re Asphodel and Sargant*, 17 U. C. Q. B. 593.

(*q*) Where a thing is directed to be done by a statute "forthwith," it means within a reasonable time. *Reg.* v. *Worcester*, 7 Dowl. 789. The word "immediately" is more strictly construed. *Rex* v. *Huntingdonshire*, 5 D. & R. 588: *Reg.* v. *Ashton*, 1 L. M. & P. 491; *Folkard* v. *Metropolitan R. W. Co.*, L. R. 8 C. P. 470.

(*r*) Unless the council specially appoint the returning officer and deputy-returning officers to hold the new election, the officers who held the last election for the municipality or ward the vacancy to which is to be filled, shall hold the election.

election to fill the vacancy has not been ordered by the Court or a Judge, the council may either direct that an election be held to fill the vacancy, or may elect one of their number to fill the office during the residue of the term. 48 V. c. 39, s. 6.

Seat to be held for residue of term.

183. The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected, or for which the office is to be filled. (*s*) 46 V. c. 18, s. 181.

Warrant for new election.

184. In case such non-election, neglect or refusal as aforesaid, (*t*) occurs previous to the organization of the council for the year, the warrant for the new election shall be issued by the head or a member of the council for the previous year, or by the clerk, in like manner as provided by section 181 ; (*a*) but such neglect or refusal shall not interfere with the immediate organization of the new council, provided a majority are present of the full number of the council. 46 V. c. 18, s. 182.

but neglect not to prevent organization of council.

Time for holding new election.

185. The returning officers and deputy-returning officers shall hold the new election at furthest, within fifteen days after receiving the warrant, (*b*) and the clerk shall appoint a

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(*s*) The word "seat" is several times used in this Act. It is a figurative expression to indicate office. The person elected is, in the language of this section, to hold his seat for the residue of the term of his predecessor, in other words, to hold the office for the residue of such term. The word, in the sense here used, is borrowed from Parliamentary language.

(*t*) See note *n* to s. 181.

(*a*) Five councillors were elected in January. At the first meeting, on the 17th January, only one made the declaration of qualification ; and a doubt having been raised as to the remaining four, in consequence of some employment held by them under the corporation, they delayed in order to consult the County Judge. On the 19th January they met again and organized themselves, but on the same day the reeve for the previous year issued his warrant to elect four other councillors who were returned ; and on the 31st January these four with the one who had first qualified, met and claimed to be the council. *Held*, that the second election was invalid ; for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground for a new election. *In re Asphodel and Sargant* 17 U. C. Q. B. 593. A mandamus was therefore ordered to the clerk to deliver up the papers to the council first chosen. *Ib.*

(*b*) The returning officer is to hold the election at *furthest* "*within* fifteen days *after receiving the warrant.*" The general rule for the computation of time fixed by a statute is—unless there be something in the statute to the contrary—to hold the first day excluded and the

day and place for the nomination of candidates, and the election shall in respect to notices and other matters be conducted in the same manner as the annual elections. 48 V. c. 39, s. 7.

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last day included. *Ex parte Fallon*, 5 T. R. 283. In this case the statute required an annuity deed to be enrolled "*within* twenty days of the execution," and it was read as excluding the day of execution. Lord Kenyon, in delivering judgment, said, "It would be straining the words to construe the twenty days *all* inclusively. Suppose the direction of the Act had been to enrol the memorial within *one* day after the granting of the annuity, could it be pretended that it meant the same as if it were said that it should be done on the *same* day on which the act was done? If not, neither can it be construed inclusively where a greater number of days is allowed." The same interpretation was put on the words "*within* twenty-one days after the execution," in the case of the registry of a warrant of attorney. *Williams* v. *Burgess*, 9 Dowl. 544. Lord Denman said, "The question in this case has been decided in *ex parte Fallon*, which is an unquestionable authority." In *Scott* v. *Dickson*, 1 P. R. 366, where the words were "within sixteen days after the service hereof," as used in the Ejectment Act 14 & 15 Vict. c. 114. Robinson, C. J. said, "I think the rule of computation given by Stat. 2 Geo. IV. ch. 1, s. 22, does not apply, as this is a term appointed by a statute, not by a rule of court, and by a statute passed after that Act, and therefore we must compute according to the general rule where there is no express provision. This makes the first day inclusive and the last exclusive, or *vice versa*." *Scott* v. *Dickson*, 1 P. R. 366, was followed in *Vrooman* v. *Shuert*, 2 P. R. 122; *Buffalo and L. H. R. W. Co.* v. *Brooksbanks*, *Ib.*, 126; *Cameron* v. *Cameron*, *Ib.*, 259; *Cullaghan* v. *Baines* *Ib.*, 144; *Clark* v. *Waddell*, *Ib.*, 145; *Phillips* v. *Merritt*, *Ib.*, 233; *Cuthbert* v. *Street*, 6 U. C. L. J. 20; *In re West Toronto Election*, 5 P. R. 394. See further, *Warren* v. *Slade*, 9 Am. 70; *Westbrook Manufacturing Co.* v. *Grant*, 11 Am. 181; *Bemis* v. *Leonard*, 19 Am. 470; *Clarke* v. *Garrett*, 28 U. C. C. P. 75. The following cases, in which *both* days were held to be inclusive, were decided under the 2 Geo. IV. c. 1, or some other statute or rule expressly making both days inclusive: *Moore* v. *Grand Trunk R. W. Co.*, 2 P. R. 227; *Ross* v. *Johnson* *Ib.*, 230; *Ridout* v. *Orr*, *Ib.*, 231; *Williams* v. *Lee*, 2 U. C. C. P. 157; *Morrell* v. *Wilmott*, 20 U. C. C. P. 378. See further notes to sec. 231 of the Assessment Act. But the words "*from*" and "*until*" do not admit of so rigid and well understood a rule of construction. In *Pugh* v. *Duke of Leeds*, 2 Cowp. 714, 717, Lord Mansfield said, "In grammatical strictness and in the nicest propriety of speech that the English language admits of, the sense of the word 'from' must always *depend* upon the *context* and *subject matter* whether it shall be construed *inclusive* or *exclusive* of the *terminus a quo*, and whilst the gentlemen of the bar were arguing this case, a hundred instances and more occurred to me, both in verse and prose, where it is used both inclusively and exclusively. If the parties in the present case had added the word 'inclusive' or 'exclusive,' the matter would have been very clear. If they had said 'from the day of the date *inclusive*,' the term would have commenced immediately, if they had said from

Mode of appointing requisite number of members of council if election neglected etc.

186. In case, at an annual or other election, the electors from any cause not provided for by sections, 158 or 159 neglect or decline to elect the members of council for a municipality on the day appointed, or to elect the requisite number of members, the new members of the council, if they equal or exceed the half of the council when complete, or a majority of such new members, or if a half of such members are not elected, then the members for the preceding year, or a majority of them,—shall appoint as many qualified persons as will constitute or complete the number of members requisite; (*c*) and the persons so appointed shall accept

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the day of the date *exclusive* it would have commenced the *next* day. But let us see whether the context and subject matter in this case do not show that the construction here should be *inclusive* as demonstrably as if the word 'inclusive' had been added," &c. In *Watson* v. *Pears*, 2 Camp. 294, Lord Ellenborough said, "It used to be held that 'from the date' includes the day, and from 'the day of the date' excludes it. But since the case of *Hugh* v. *Duke of Leeds*, the formal distinctions have been done away, and the rule of good sense has been established that such words shall be construed according to the meaning of the parties who use them." In *Isaacs* v. *Royal Ins. Co.*, L. R. 5 Ex. 296, Kelly, C. B., said "Upon looking at the authorities before *Hugh* v. *Duke of Leeds*, it appears that questions without number arose as to whether upon a contract to do any act or enter into an engagement at or for a definite term, say six or twelve months from the day of the date of some act done, time was to be reckoned exclusive or inclusive of the last day of the time, but in that case it was observed that it was impossible to lay down any fixed rule, but that each case must depend on its own circumstances and subject matter. Sometimes the first day, and sometimes the last was included. No settled and invariable rule has been laid down for all cases." The word "until," which is also equivocal in its meaning was in this case held to be inclusive of the last day. See also *Hardy* v. *Ryle*, 9 B. & C. 603, 609.

(*c*) There is a difference between an election and an appointment. See *Regina ex rel. Beaty* v. *O'Donaghue*, 3 U. C. L. J. 75. An *election*, whether by the electors at large or by the members of the council, is by vote, and usually consists in the choice of the members of the council by the electors of the municipality, or of the head of the council by the members of the council elect; both of which proceedings are in general essential to the organization of the council. Sec. 225 and notes. An *appointment* is, properly speaking, an act of the council after it has been organized. Thus: the clerk and other officers are appointed, not elected, by the council. See sec. 245. The section speaks of appointments, not of elections. It therefore becomes material to consider precisely under what circumstances the power of appointment under the section can be exercised. If there be an *entire* failure to elect members on the day fixed for the purpose, the power to appoint would of course devolve on the council of the preceding year, which, having been duly organized, continues

office and make the necessary declarations under the same penalty, in case of refusal or neglect, as if elected. (*d*) 46 V. c. 18, s. 184.

DIVISION VIII.—CONTROVERTED ELECTIONS.

How validity or right of election determined. *Secs.* 187-197.
Writ for removal, &c. *Sec.* 198.
If election of whole council invalid. *Sec.* 199.
Disclaimer. *Secs.* 200-205.
Costs. *Secs.* 203, 205, 206.
Decision of Judge final;—Enforcing Judgment. *Sec.* 207.
Judges may settle forms and practice. *Sec.* 208.

Trial of contested elections or right to elect.

187. In case the right of a municipality to a reeve or deputy-reeve or reeves, or in case the validity of the election or appointment of mayor, warden or reeve, or deputy-reeve, alderman, or councillor is contested, (*e*) the same may be tried by a Judge of the High Court, or the senior or officiating Judge of the County Court of the county in which the election or appointment took place; (*f*) and when the right

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in office until superseded by the organization of a new council. But if the failure to elect be only *partial*, that is to say, if the failure be to elect the requisite number of members, then the other members of the council, *provided they equal or exceed the half of the council when complete*, appoint the requisite number of members. If *less* than half of the members of the new council have been elected, then the members of the *preceding* year may make the requisite appointments.

(*d*) See sec. 277.

(*e*) When the office is of a public nature the remedy by *quo warranto* information is the proper one. See *Askew* v *Manning*, 38 U. C. Q. B. 345. And where *quo warranto* does not lie *mandamus* is the proper remedy. *Reg.* v. *St. Martin's-in-the-Fields*, 17 Q. B. 149; *Reg.* v. *Hertford College*, 2 Q. B. D. 590. Until the passing of the C. S. U. C. ch. 54, there was no mode by which the right of a municipality to a reeve or deputy reeve could be contested otherwise than by an information in the nature of a *quo warranto*. *Reg. ex. rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51. Nor until the passing of that Act was there any power in a summary manner to determine the validity of an appointment. *Reg. ex rel. Beaty* v. *O'Donaghue*, 3 U. C. L. J. 75.

(*f*) Before the summary mode of trial of contested elections prescribed by the Municipal Act, the only remedy was the tedious and expensive one of information in the nature of a *quo warranto*, and in cases where the provisions of the Municipal Act are inapplicable that

of a municipality to a reeve or deputy-reeve or reeves is the matter contested, any municipal elector in the county may be the relator, and when the contest is respecting the validity of any such election as aforesaid, any candidate at the election, or any elector who gave or tendered his vote thereat, or if respecting the validity of any such appointment, any member of the council or any elector of the ward, or, if there is no ward, of the municipality for which the appointment was made, may be the relator for the purpose. (*g*) 46 V. c. 18, s. 185.

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remedy must still be adopted. *In re Biggar*, 3 U. C. Q. B. 144; *Reg. ex rel. Coleman* v. *O'Hare*, 2 P. R. 18; *Reg. ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51. Where an information in the nature of a *quo warranto* is asked for on behalf of an individual, it must if allowed, be exhibited in the name of the Master of the Crown Office. *Ib.* The summary mode prescribed by the Municipal Act is, so far as applicable, intended as a substitute for the proceeding by *quo warranto* information. *Reg. ex rel. White* v. *Roach*, 18 U. C. Q. B. 226. The general practice is, as much as possible, to confine parties aggrieved to the relief to be obtained under the statute. *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457. *Mandamus* is not an appropriate remedy. *In re Brenan*, 6 O. S. 330. Where a county court judge having directed the issue of writs of *quo warranto* to test the validity of an election, afterwards set aside the writs for irregularity it was held that a Superior Court had no power to interfere. *Reg. ex rel. Grant* v. *Coleman*; *Reg. ex rel. Dwyer* v. *Lewis*, 8 P. R. 497; 32 U. C. C. P. 104; 46 U. C. Q. B. 175; 7 A. R. 619. There was a conflict of opinion as to the power of the county judge to set aside the writ after it had been issued and served. *Ib.* Under the former practice it was held that the master in chambers had not jurisdiction to try a municipal controverted election. *Reg. ex rel. Wilson* v. *Duncan*, 11 P. R. 379. But see now Con. Rules 30.

(*g*) The relator is the person upon whose application the jurisdiction of the Judge is put in motion. It is to be observed that—

1. When the right of a municipality to a reeve or deputy reeve or reeves is the matter of contest, *any* municipal elector *in the county* may be the relator.

2. When the contest is respecting the validity of any such election as aforesaid, "*any candidate* at the election, or any elector who gave or tendered his vote" at the election, may be a relator.

3. When respecting the validity of any such appointment, "*any* member of the council, or *any* elector of the ward, or, if there is no ward, of the municipality for which the appointment was made," may be the relator. But the right to an office on the ground that a proper declaration has not been made under sec. 270, and of no property qualification, may be questioned by a *quo warranto* at the instance of a ratepayer not a voter of or resident in the ward. *Reg. ex rel. Clancy* v. *St. Jean*, 46 U. C. Q. B. 77.

It is not necessary to give any definition of an elector. Reference

Time within which pro-

188. If within six weeks after the election, or one month

may be made to sec. 79 and following sections as to who are electors. But it is to be observed, that while *any* elector may be relator when the *right of a municipality* to a reeve or deputy reeve or reeves is the matter of contest, it must be "an elector who gave or tendered his vote at the election," or "a candidate" in the case where the *validity of an election* is the matter of contest. It is not in such a case as last mentioned, enough for the relator to show that he "protested and voted" against the person elected. *Reg. ex rel. White* v. *Poach*, 18 U. C. Q. B. 226. "Candidate" is a vague term. No certain idea is fixed by law to it. *Per* Lord Mansfield, in *Combe* v. *Pitt*, 3 Burr. 1590; see further, *Morris* v. *Burdett*, 1 Camp. 218. A candidate was defined by Lord Ellenborough as "a person offering himself to the suffrages of the electors," *Morris* v. *Burdett*, 2 M. & S. 216, and by Dampier, J., as "one who voluntarily proposes himself or adopts the proposal of others." *Ib.* See further, *Muntz* v. *Sturge*, 8 M. & W. 310. It is not necessary to constitute a person a candidate for the purposes of this section that he should be actually nominated at the election. *Reg. ex rel. Corbett* v. *Jull*, 5 P. R. 41. But if, after having been nominated, he, with the consent of his proposer and seconder, withdraw, he ceases to be a candidate. *Reg. ex rel. Coyne* v. *Chisholm*, 5 P. R. 328. The interest of the relator is not established by the ordering of the writ. *Reg. ex rel. Shaw* v. *Mackenzie*, 2 C. L. Chamb. R. 36, and where the statement of the relator did not shew that he was a candidate or an elector who had voted or tendered his vote at the election it was held that this was not a mere irregularity which could be amended at a later stage of the proceedings *Reg. ex rel. Chauncey* v. *Billings*, 12 P. R. 404. It is not necessary that a relator who was a candidate should shew in his application that he himself is qualified to accept office. *Reg. ex rel. Mitchell* v. *Adams*, 1 C. L. Chamb. R. 203. An elector who has himself been instrumental in electing a candidate will not be allowed afterwards to complain of the election of that candidate. *Reg. ex rel. Pomeroy* v. *Watson*, 1 U. C. L. J. 48; *Reg. ex rel. Loyall* v. *Ponton*, 2. P. R. 18; *Reg. ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457: *Reg. ex rel. Grayson* v. *Bell*, 1 U. C. L. J. N. S. 130; *Reg. ex rel. Regis* v. *Cusac*, 6 P. R. 303. Upon similiar principles it has been held that a councillor who is instrumental in the election of a particular person as reeve or deputy reeve, cannot afterwards be allowed to move against the person so elected reeve or deputy reeve. *Reg. ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; but see *Reg. ex rel. Clint* v. *Upham*, 7 U. C. L. J. 69. So where there is only one candidate or set of candidates proposed, and he or they are in good faith elected by acclamation, no contest will be allowed under this section. *Reg. ex rel. Bugg* v. *Bell*, 4 P. R. 226. "If the electors do not think it worth while to contest an election in the ordinary way, it may properly be considered that the Legislature did not mean to give them a right to contest it by an application of this kind." *Per* Hagarty, C. J., *Ib.* 229. It is not desirable that the clerks of municipal corporations, having the custody of the papers of the corporation, should be relators in *quo warranto* proceedings to unseat members of the councils of which they are clerks, *Reg. ex rel. Mc-*

after acceptance of office by the person elected, (*h*) the relator shews by affidavit to such Judge, (*i*) reasonable ceedings to be instituted, and

Mullen v. *DeLisle*, 8 U. C. L. J. 291. Where the opinion of a Judge of the Superior Court was against a sitting member, he declined to withhold his judgment, upon the ground that there was a prior relation at the instance of a different relator against same defendant for same cause, pending before a County Court Judge, which relation it was sworn was collusive and intended to protect the defendant in the enjoyment of office contrary to law. *Reg. ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71. A stranger to the proceedings may, if otherwise qualified, attack them on the ground that they have been initiated in collusion with the defendant. *Reg. ex rel. Patterson* v. *Vance*, 5 P. R. 334. But he will not be allowed to set up irregularities in the proceedings as such unless he show that the relator committed them purposely, as, for example, to secure the failure of his own proceedings. *Ib.* If a relator find his proceedings irregular, he may notify defendant not to appear and of his intention to proceed *de novo*, in which case he may successfully make a second application. *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89.

(*h*) The first point for consideration is the time within which the application is to be made, that is, "within six weeks after the election, or one month after the acceptance of office by the person elected." In the computation of the six weeks, the day of the election is to be excluded. See note *b* to sec. 185. Six weeks at all events are allowed to impeach the election, although the office may have been accepted more than a calendar month. The word "month," under the *Interpretation Act* (Rev. Stat. c. 1, s. 8), means a calendar month. If the application be not made within the six weeks, the test is then, whether the office has been accepted more than one month. *Reg. ex rel. Rosebush* v *Parker*, 2 U. C. C. P. 16. The acceptance must be a formal acceptance by the statutory declaration of qualification and office, and not a mere verbal acceptance by speech to the electors or such like. *Reg.* v. *McIntosh*, 46 U. C. Q. B. 98. See also *Reg. ex rel. Felitz* v. *Howland*, 11 P. R. 264. The application must not only be made within the time limited, but be made as the practice directs. *Reg. ex rel. Telfer* v. *Allan*, 1 P. R. 214. Therefore, under the old practice where there was no written motion paper, as required by Rule No. 1, M. T. 14 Victoria (now superseded) and the state ment was not signed, as required by Rule No. 2, the application failed. *Ib.*; and if the time limited be allowed to elapse without an application, the relator will not be allowed to file an information in the nature of a *quo warranto*. *Reg. ex rel. White* v. *Roach*, 18 U. C. Q. B. 226. But see *Reg. ex rel Clancy* v. *St. Jean.* 46 U. C. Q. B. 77.

(*i*) The affidavit of the relator is sufficient to obtain the writ. *Reg. ex rel. Carroll* v. *Beckwith* 1 P. R. 278. Where, under the old practice, the affidavit of the relator did not fully set out in detail the facts and circumstances alleged in the statement as required by Rule of M. T. 14 Vict., it was held not to be a mere irregularity which could be amended at a later stage. See *Reg. ex rel. Chauncey* v. *Billings*, 12 P. R, 404. It seems, although it has not been expressly decided, that the solicitor of the relator may act as a com

security and proof required

ground for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, (*k*) and if the relator enters

missioner for taking the affidavits. *Reg. ex rel. Blaisdell* v. *Rochester*, 12 U. C. Q. B. 630.

(*k*) The grounds of the application are here specified, viz.: either that the election was not legal, or was not conducted according to law, or that the person declared elected was not duly elected. The granting or refusal of the writ is a matter of discretion. If "reasonable grounds" be shewn, the writ no doubt will be ordered. But it is not for every mistake or irregularity that the writ will be ordered. If the mistake or irregularity in no manner contributed to an improper result, the Judge may very properly refuse the writ. See *Reg.* v. *Ward*, L. R. 8 Q. B. 210. The application may be made although defendant has not taken the oath of office. *In re Sawers* v. *Stevenson*, 5 U. C. L. J. 42.

The effect of Rule 3 of The Consolidated Rules of Practice (1888) is to abolish all the old practice relating to the procedure by summons for a writ in the nature of a writ of *quo warranto* and to substitute Rules 1038 to 1044, inclusive, for the old rules of M.T., 14 Vict. The new Rules are so in conflict with many of the provisions of the Municipal Act relating to contested elections that it is impossible to make them stand with the provisions of the Act, and it is to be regretted that the Act has not been amended so as to harmonise with the Rules. It is enacted by 51 Vic. cap. 2, sec. 4, that the Rules shall have the same force and effect as if they were enacted by Statute, and all inconsistent enactments are repealed. The practice therefore is now governed by the Rules and by the provisions of the Municipal Act, so far as consistent therewith. A proceeding in the nature of *quo warranto* is now under the Rules an ordinary motion and the ordinary practice of the Court, which is applicable to motions generally, is equally applicable to motions of this sort; thus the ordinary practice of the Court will obtain with regard to services, amendments, cross-examination on affidavits, discovery, evidence, hearings, &c.

Application must be made to the Court or a Judge for leave to serve the notice of motion, and upon such application security must be given to the satisfaction of the Court or a Judge, and upon the same being allowed a *fiat* is given for leave to serve the notice of motion. (Rule 1038). The notice of motion must be at least a seven clear days notice, and the relator may either mention the return day therein, or may state that the motion will be made on the eighth day after the day of service of the notice, excluding the day of service. (Rule 1039). The relator, in his notice of motion, must set out his name in full, his occupation, place of residence, and the interest which he has in the election, as candidate or voter, and he must also set forth specifically, under distinct heads seperately numbered, all such grounds of objection as he intends to use against the validity of the election complained against, and in favour of the validity of the election of the relator or another or other person or persons, when he claims that he or they or any of them have been duly elected (Rule 1040). Before serving his notice of motion the relator must file all the affidavits and material upon which he intends to move, except when

into a recognizance before the Judge or before a commissioner

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viva voce evidence is to be taken, and in that case he should name in his notice the witnesses whom he proposes to examine. (Rule 1041).

The following may be the form of the notice of motion :

IN THE HIGH COURT OF JUSTICE,

———— Division,

Between The Queen on the relation of

———————

Plaintiff,

AND

———————

Defendant.

Take notice that by leave of —— a motion will be made before the presiding Judge in Chambers (*or* the Master in Chambers) at Osgoode Hall in the City of Toronto at —— o'clock in the forenoon of the eighth day after the day of service hereof, excluding the day of such service, or so soon thereafter as counsel can be heard on behalf of the above named relator —— (*set out the name in full of the relator, his occupation and place of residence*) who has an interest in the election hereinafter referred to as (*a candidate or voter thereat, as the case may be*) for an order setting aside and declaring invalid and void the election or pretence of an election held on the —— day of ——, A.D. ——, at ——, in the County of ——, under which election or pretended election —— the above named defendant hath unjustly usurped and still doth usurp the office of —— [and (*when it is claimed that the relator, or the relator and another, or others ought to have been returned*) declaring that (*here name the party or parties so entitled*) was (*or were*) duly elected thereto and ought to have been returned at such election and should now be admitted thereto,]

Upon the following grounds :—

1. That (*for example*) the said election was not conducted according to law in this, that &c.

2. That the said——was not duly or lawfully elected or returned, in this, that &c.

3. That &c.

and upon grounds disclosed in the affidavits and papers filed, or for such further and other order as to the Court shall seem meet and as the nature of the case shall require, and upon and in support of such motion will be read the affidavits of —— this day filed [*in case viva voce evidence is to be tendered the names of the witnesses whom it is proposed to examine should be given.*]

Dated &c.

Signed by the relator in person or by his solicitor.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, as in that event, the office cannot be claimed by any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

for taking affidavits, in the sum of $200, with two sureties (*l*) (to be allowed as sufficient by the Judge upon

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The following form may be used for the Judge's Fiat and may conveniently be endorsed upon the Notice of Motion.

IN THE HIGH COURT OF JUSTICE.

———— Division,

Between The Queen on the relation of

———

Plaintiff.

AND

———

Defendant.

Upon reading the within notice of motion and the affidavits and papers therein referred to and upon reading the recognizance of the above named relator, and the same being allowed as sufficient, let the said relator be at liberty to serve the notice of motion upon the defendant.

Dated——A.D.,——

On the hearing of the motion the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected on any ground not specified in the notice of motion; but it shall nevertheless, be in the discretion of the Judge to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him. (Rule 1042).

The statement of the relator as to an objection supported by his affidavit is looked upon as a material traversable allegation, and if defendant omit to answer it, he may be held to admit its truth. *Reg. ex rel. Hervey* v. *Scott*, 2 C. L. Chamb. R. 88. Under the former practice the statement of the relator might be amended by shewing that the relator was a candidate or a voter, and no doubt the notice of motion might now be in like manner amended. *Reg. ex rel. O'Reilly* v. *Charlton*, 6 P. R. 254. Where the allegation was, that the relator "had an interest in the said election as a voter," and his affidavit stated that he had voted "on the said election, but not for the said William Rastall," it was held to be sufficient. *Reg. ex rel. Ross* v. *Rastall*, 2 U. C. L. J. N. S. 160. A relator is not necessarily bound to prove his interest. *Reg. ex rel. Bartliffe* v. *O'Reilly*, 8 U. C. Q. B. 617; see further *Reg. ex rel. Pomeroy* v. *Watson*, 1 U. C. L. J. 48; *Reg. ex rel. Campbell* v. *O'Malley*, 10 U. C. L. J. N. S 250.

(*l*) Where the recognizance filed by the relator was not entered into before a judge or commissioner for taking affidavits, nor allowed by the judge in the manner prescribed by this section, nor conditioned to prosecute the writ with effect. Held, not a mere irregularity which could be amended at a later stage. *Reg. ex rel. Chauncey* v. *Billings*, 12 P. R. 404. As to the power of a notary public to act as a commissioner for taking affidavits, see Rev. Stat. c. 153.

affidavit of justification) (*m*) in the sum of $100 each,

The following may be the form of the recognizance :

IN THE HIGH COURT OF JUSTICE.

———— Division,

ONTARIO, County (*or* United Counties) of——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me ——, of ——, Chief Justice (*or* a Justice, *or* a Commissioner for taking affidavits) in Her Majesty's High Court of Justice for Ontario, cometh——, of——, and——, of——, and acknowledge themselves severally and respectively to owe to——, of —— (*here insert the name or names of the person whose election is complained against*), as follows, that is to say, the said—— the sum of two hundred dollars, and the said——and —— the sum of one hundred dollars each, upon condition that if the said ——do prosecute with effect the notice of motion in the nature of *quo warranto*, to be served pursuant to a fiat to be made at the instance and upon the relation of the said——, against the said—— to show by what authority he (*or* they) the said——claims (*or* claim) to be (*here state the office so claimed*), and why he (*or* they) the said ——should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or* the party *or* parties entitled) should not be declared duly elected, and be admitted to the said office] ; and if the said——do pay to the said——all such costs as the said Court (*or* the Judge presiding in Chambers, *or* the Master in Chambers, at the City of Toronto,) shall direct in that behalf, then this recognizance to be void, otherwiseto remain in full force.

Taken and acknowledged the day and year first above mentioned,

Before me——

(*m*) The following may be the form of affidavit of justification :

IN THE HIGH COURT OF JUSTICE.

———— Division,

I, *A. B.*, of, &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows :

1. That I am a freeholder (*or* householder, *as the case may be*), residing at, &c.

2. That I am worth property to the amount of $100 over and above what will pay all my just debts (*if bail in any other action, add*) "and for every other sum for which I am now bail."

3. That I am not bail in any other action or proceeding (*or*, except for *E. F.*, at the suit of *G. H.*, in the Court of, &c., in the sum of, &c.

And I, *C. D.* of, &c., the remaining surety in the recognizance hereto annexed, make oath and say as follows :

1. That I am a freeholder, &c. (*as before*).

The above named deponents, *A. B.* and *C. D.*, were severally sworn before me, at, &c., in the County of, &c., this——day of——, A. D. 18—. } *A. B.* *C. D.*

A Commissioner, &c.

conditioned to prosecute the writ with effect, or to pay the party against whom the same is brought any costs which may be adjudged to him against the relator, the Judge shall direct a writ of summons in the nature of a *quo warranto* to be issued to try the matters contested. (*n*) 46 V. c. 18, s. 186.

Writ in nature of *quo warranto*.

Evidence to be used on return of writ may be taken *viva voce* by leave of Judge, etc.

189. The Judge of the High Court before whom the writ of summons is returnable, may order the evidence to be used on the hearing of the summons to be taken *viva voce* before the Judge of the County Court, in the presence of counsel for, or after notice to, all parties interested, and such Judge shall return the evidence to the Registrar at Toronto, of the Division from which the writ of summons was issued, and every party shall be entitled to a copy thereof. (*o*) 46 V. c. 18, s. 187.

When the relator claims to be elected.

190. In case the relator alleges that he himself or some other person has been duly elected, the writ shall be to try the validity, both of the election complained of, and the alleged election of the relator or other person. (*p*) 46 V. c. 18, s. 188.

(*n*) Where under the old practice a writ of quo warranto had been issued and served, the judge who directed the issue had no power to set it aside. *Reg. ex rel., Grant* v. *Coleman*, 7 A. R. 619.

(*o*) This and the seven following sections appear to be now effete, as they relate to proceedings which are to be commenced by writ of summons, and proceedings under the Act are no longer to be commenced in that manner. It is probable however that the Judges will so mould the present practice, (see note (*k*) to sec. 188) and regulate the proceedings thereunder as to make the same conform as nearly as may be to the procedure indicated in the Act.

(*p*) It seems to be well understood that before a Judge will entertain an application, not merely to make void the election of the party complained against, but to declare the relator or some other person elected in his stead, it must be shewn, to the satisfaction of the Judge that notice had been given of the disqualification of the successful candidate at such time and in such manner as must have made the electors aware that if they voted for that candidate their votes would be thrown away. See note *p* to sec. 77. Twenty-six persons voted twice for the defendant. The Judge deducted twenty-six from the gross number of votes recorded for defendant, and thus left the relator in a majority of nine. The relator was accordingly declared elected. *Reg. ex rel Pomeroy* v. *Watson*, 1 U. C. L. J. 48. The relator, who is entitled to the seat, is not to be deprived of it by the resignation of his opponent. *Reg. ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87.

When several elections complained of.

191. In case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one writ against such persons. (*q*) 46 V. c. 18, s. 189.

Where more writs than one, all to be tried by the same judge.

192. Where more writs than one are brought to try the validity of an election, or the right to a reeve or deputy-reeve or reeves as aforesaid, all such writs shall be made returnable before the Judge who is to try the first, and the Judge may give one judgment upon all, or a separate judgment upon each one or more of them, as he thinks fit. (*r*) 46 V. c. 18, s. 190.

Writ, who to issue, and return day thereof

193. The writ shall be issued by the Clerk of the Process of the said High Court, or by the Local or Deputy Registrar, or Deputy Clerk of the Crown in the county in which the election took place, and shall be returnable before a Judge in Chambers at Toronto, or before the Judge of the County Court at a place named in the writ, (*s*) upon the

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(*q*) Under the statute 12 Vict. cap. 81, sec. 146, it was held that a private relator had no right by a writ of summons, in the nature of a *quo warranto*, either to attack the township council by name upon grounds which, if mentioned, must necessarily lead to a dissolution of the body, or to attack the whole council in one proceeding, through the individual names of every member of it. *Reg. ex rel. Lawrence* v. *Woodruff*, 8 U. C. Q. B. 336. But the law appears to have been in this respect afterwards amended (see 13 & 14 Vict. cap. 64, sch. No. 23, and 16 Vict. cap. 181, s. 27), and sec. 199 of this Act appears to be in the amended and extended form.

(*r*) At an election there may be several candidates ; so there may be several persons elected to office. One person may see fit to contest the election of any successful candidate ; so another person may see fit to contest the election of another of the successful candidates. See *Line* v. *Warren*, 14 Q. B. D. 548. Each relator complying with this statute, may have his own separate and independent proceeding. In this way there may be several motions made to try the validity of the same election. In such case, all the motions are to be made returnable before the Judge who is to try the first. One object is obvious, and that is, to preserve uniformity of decision. *Reg. ex rel. Forward* v. *Detlor*, 4 P. R. 198. Where the first relation is collusive, and merely intended to protect the defendant in the enjoyment of office, it may be disregarded. *Reg. ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.

(*s*) Although under the old practice a County Court Judge might grant a fiat for the writ, it had always to be issued out of the High Court. It was held under the old practice that a County Court Judge might order the writ to issue returnable before a Judge of the High Court. *Reg. ex rel. Lutz* v. *Williamson*, 1 P. R. 94. But see now Rule 41 restricting the authority of Local Judges in *quo warranto* proceedings.

eighth day after service computed exclusively of the day of service, or upon any later day named in the writ. 46 V. c. 18, s. 137.

Service of writ.

194. The writ shall be served personally, unless the party to be served keeps out of the way to avoid personal service, in which case the Judge, upon being satisfied thereof, by affidavit or otherwise, may make an order for such substitutional service as he thinks fit. (*t*) 46 V. c. 18, s. 192.

Returning officer or deputy returning officer may be made a party.

195. The Judge before whom the writ is made returnable, or is returned, may, if he thinks proper, order the issue of a writ of summons at any stage of the proceedings to make the returning officer, or any deputy-returning officer a party thereto. (*u*) 46 V. c. 18, 193.

The Judge may allow certain persons to intervene and defend.

196. The Judge before whom the writ is returned may allow any person entitled to be a relator to intervene and defend, and may grant a reasonable time for the purpose; (*v*) and an intervening party shall be liable or entitled to costs like any other party to the proceedings. (*w*) 46 V. c. 18, s. 194.

Judge shall try summarily.

197. The Judge shall, in a summary manner, upon statement and answer, without formal pleadings, hear and determine the validity of the election, or the right to a reeve or

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(*t*) Under the old practice personal service could only be dispensed with under the circumstances here mentioned. *Reg. ex rel. Arnott* v. *Merchant*, 2 C. L. Chamb. R. 167.

(*u*) The Court will presume that a public officer acts properly and honestly till the contrary is shown; and where it is intended to charge any officer with partiality or unfairness, the case should be plainly stated and clearly made out. *Reg. ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138. Where a returning officer, after closing the poll, received an affidavit from M. that his vote had been entered by mistake for relator, on which he altered his vote in the poll-book, and, the votes then being equal, gave his casting vote, the election was set aside. *Reg. ex rel. Acheson* v. *Donoghue*, 15 U. C. Q. B. 454. In a similar case the returning officer was ordered to pay the relator's costs. *Reg. ex rel. Mitchell* v. *Rankin*, 2 C. L. Chamb. R. 161. If the returning officer act in good faith, though illegally, it is not usual to inflict costs on him. *Reg. ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89. See also note *b* sec. 206.

(*v*) The only persons allowed to intervene are persons entitled to be a relator, as to which see note *g* to sec. 187.

(*w*) See note *b* to sec. 206.

deputy-reeve or reeves, and may, by order, cause the assessment rolls, collectors' rolls, list of electors, and any other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him, (*x*) and sent to be tried by jury by writ of trial (*y*) directed to any Court named

Evidence.

(*x*) If any question be raised as to whether the candidate or any voter has been guilty of bribery or undue influence, under the meaning of sections 209 or 210 of this Act, "Affidavit Evidence" is not to be used. See sec. 212.

(*y*) It is now provided by Rule 1043 that in case a necessity shall appear for sending an issue to be tried by a jury, an order for that purpose may be made, and the issue to be tried shall be stated in the order.

The following may be the form of the order for the trial of an issue :

IN THE HIGH COURT OF JUSTICE.

———— Division.

Before the Honorable Mr. Justice ———— (*or* Chief Justice *or* Master in Chambers *as the case may be*).

—— day the —— day of —— A.D. 18—.

Between The Queen on the relation of

———————

Plaintiff.

and

———————

Defendant.

Whereas upon the trial of the validity of an election of —— chosen upon the —— day of —— to be —— for the township of —— (*or as the case may be*) in the county of —— and which election hath been complained of by the above named relator alleging (*as the case may be*) that he himself, or that he and *A. B.*, or that *A. B.*, &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here state concisely the issues to be tried*).

It is ordered that the said question of fact be tried by a jury before the presiding Judge, who shall hold the next sittings of Assize at —— (*or as the case may be*).

The record for trial may be in the following form :—

IN THE HIGH COURT OF JUSTICE.

———————— Division,

Between The Queen upon the relation of

———————

Plaintiff.

and

———————

Defendant.

By an order made in this cause dated the —— day of —— A.D.

Trial.

by the Judge, or by one or more of these means, as he deems expedient; subject, however, to the provisions of section 212. 46 V. c. 18, s. 195.

If election invalid, Judge shall remove person not duly elected, and admit person elected or cause new election.

198. In case the election complained of is adjudged invalid, the Judge shall forthwith, by writ, cause the person found not to have been duly elected to be removed, and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order a writ to issue causing such other person to be admitted; and in case the Judge determines that no other person was duly elected instead of the person removed, the Judge shall by the writ cause a new election to be held. (*z*) 46 V. c. 18, s. 196.

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18 —— it has been directed that the following questions of fact be tried by a jury before &c., that is to say :—

Whether &c.

The following may be the form of indorsement of verdict thereon :

I hereby certify that on the —— day of ——, before me *L. M.*, Judge of the County Court of the County (*or* United Counties) of ——, (*or as the case may be*) came as well the within named relator as the within named (*the other party or parties*) by their solicitors (*or as the case may be*) and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

(*z*) It is provided by Rule 1044 that when the Judge, before whom any such case shall be pending shall have determined the same, an order shall be drawn up in the usual manner, which shall state concisely the ground and effect of the judgment, which order may be at any time amended by the same judge in regard to any matter of form, and the said order shall have the same force and effect as a writ of mandamus formerly had in the like case.

The form of such order may be as follows :

IN THE HIGH COURT OF JUSTICE,

———— Division,

Before the Honorable Mr. Justice, ———— (*or* Chief Justice *or* Master in Chambers *as the case may be*).

—— day the —— day of —— A.D. 18—.

Between The Queen on the relation of

———— *Plaintiff*,

AND

———— *Defendant.*

Upon the application of the above named relator, who complains concerning the usurpation by him alleged against the above named defendant —— of the office of —— in the —— of —— in the County of —— under the pretence of an election thereto held

If all the members ousted, etc., writ for new election to go to the sheriff.

199. In case the election of all the members of a council is adjudged invalid, the writ for their removal, and for the election of new members in their place, or for the admission of others adjudged legally elected, and an election to fill up the remaining seats in the council, shall be directed to the sheriff of the county in which the election took place: and the sheriff shall have all the powers for causing the election to be held which a municipal council has in order to supply vacancies therein. 46 V. c. 18, s. 197.

Defendant may disclaim, except in certain cases.

200. Any person whose election is complained of may, unless such election is complained of on the ground of corrupt practices on the part of such person, within one week

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on the —— day of —— A.D. 18—, at —— in the County of —— (and concerning the alleged misconduct of the above named defendant A. B. as returning officer at the said election.)

Upon hearing read the affidavits and papers filed, and the order made herein on the —— day of —— A.D., 18—. and the record upon the trial of the issue thereby directed, and the verdict endorsed thereon, and upon hearing the oral evidence adduced before me and upon hearing what was alleged by counsel for all parties.

And it appearing that the said relator had at the time of his making of his aforesaid complaint an interest in the election to the said office of —— as a ——; and that the said —— hath usurped and doth still usurp the said office [*or* that the election of —— to the said office was void] and that the said relator [*or* the said ——] was duly elected thereto and ought to have been returned and is entitled in law to be received into and to use, exercise and enjoy the said office; and that the defendant A. B. was guilty of misconduct as Returning Officer at the said election.

1. It is ordered that the said —— do not in any manner concern himself in or about the said office and that he be absolutely excluded from further using or exercising the same under pretence of the said election, and that he be and he is hereby removed therefrom;

2. And it is further ordered that the said —— be forthwith admitted, received and sworn into the said office to use, exercise and enjoy the same (*or* that the municipal corporation of the —— of —— and any sheriff, returning officer, or other person or persons to whom the same shall of right belong, do pursuant and according to the statute in that behalf cause an election to be as speedily held as shall be lawful, for the election of a person in the place or stead of the said —— who has been removed as aforesaid, and that the person to whom the same doth of right belong, do administer to the person who shall be so elected the oath, if any, in that behalf by law directed, and that the person who shall be so elected be admitted and received into the said office to use, exercise and enjoy the same.)

And it is further ordered that the said relator do recover against the said —— his costs and charges by him in and about the said relation and prosecution thereof expended, to be taxed.

Mode of proceeding.

after service on him of the writ, (*a*) transmit post paid, through the post office, directed to "The Clerk in Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court of the County of (*as the case may be*), or may cause to be delivered to such clerk or Judge a disclaimer signed by him, to the effect following: (*b*)

Form.

"I, *A. B.*, upon whom a Writ of Summons, in the nature of a *Quo Warranto*, has been served for the purpose of contesting my right to the office of Township Councillor (*or as the case may be*) for the Township of in the County of (*or as the case may be*), do hereby disclaim the said office, and all defence of any right I may have to the same.

"Dated day of

(Signed) "*A. B.*"

46 V. c. 18, s. 198

Posting and registry of disclaimer.

201. The disclaimer, or the envelope containing the same, shall moreover be endorsed on the outside thereof with the word "*Disclaimer*," and be registered at the post office where mailed. (*c*) 46 V. c. 18, s. 199.

Person elected may disclaim at any time before his election is complained of.

202. Where there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the clerk of the municipality a disclaimer signed by him as follows:—(*d*)

(*a*) Service of the notice of motion under the present practice is equivalent to service of the writ under the old practice.

(*b*) When the notice of the application has been served by leave of a Judge of the High Court and is returnable before a Judge of any such Court, the disclaimer should be addressed, "to the clerk of Judge's Chambers, at Osgoode Hall, Toronto," but as to the jurisdiction of County Court Judges see note *s* to sec. 193. The disclaimer so addressed may, if preferred, be mailed or else be delivered to the proper clerk or judge. If mailed, the envelope must on the outside be endorsed with the word "Disclaimer." The letter must also be registered in the office where mailed. Sec. 201. If the party, instead of disclaiming under this section or sec. 202, accept office, he can only resign under circumstances detailed in sec. 179 and sec. 180.

(*c*) If the disclaimer is delivered to the clerk or judge the endorsement must be on the disclaimer itself, but if transmitted through the post-office the endorsement must be on the outside of the envelope.

(*d*) Disclaimers are of two kinds:

1. Disclaimer under sec. 200, which must be transmitted within one week after "service of the writ."

"I, *A. B.*, do hereby disclaim all right to the office of Township Councillor (*or as the case may be*), for the Township of (*or as the case may be*, and all defence of any right I may have to the same. Form.

46 V. c. 18, s. 200.

203. Such disclaimer shall relieve the party making it from all liability to costs, (*e*) and where a disclaimer has been made in accordance with the preceding sections, it shall operate as a resignation, and the candidate having the next highest number of votes (*f*) shall then become the councillor, or other officer, as the case may be. (*g*) 46 V. c. 18, s. 201. Disclaimer to operate as resignation. Who to be deemed elected.

204. Every person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the council, and the clerk shall forthwith communicate the same to the council. 46 V. c. 18, s. 202. Duplicate disclaimer to be deliver to clerk.

205. No costs shall be awarded against a person duly disclaiming, unless the Judge is satisfied that such party Costs against person disclaiming.

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2. Disclaimer under this section, which may be transmitted "at any time after the election," but "before the election is complained of."

In the case of the former there are no costs, unless the judge is satisfied that the party disclaiming consented to his nomination as a candidate, or accepted the office. See sec. 205; and in the latter case there can be no costs, as the disclaimer must be made before writ, and when made relieves the party "from all liability." See sec. 203.

The effect of a disclaimer after the service of notice of the application is to put an end to the suit. *Reg. ex rel. Hannah* v. *Paul*, 9 U. C. L. J. N. S. 238. A notice disclaiming the "seat" was held sufficient in *Smith* v. *Petersville*, 28 Grant 599. But see *Reg. ex rel. Mitchell* v. *Davidson*, 8 P. R. 434.

(*e*) If the disclaimer be too late defendant may be ordered to pay costs, *Ex rel. Hawke* v. *Hall*, 2 C. L. Chamb. R. 182. See further note *d* to sec. 202, and note *b* to sec. 206.

(*f*) By the words "the candidate having the next highest number of votes" is meant the candidate having such number of votes who has not been elected; consequently where the three highest candidates were declared elected, and the one at the head of the poll resigned, the candidate who was fourth in order was held entitled to the seat. *Smith* v. *Petersville*, 28 Grant 599.

(*g*) Where the object of the relator is not only to cause the defendant to vacate office but to substitute another candidate into the office the disclaimer cannot prevent the latter being substituted but rather under this section facilitates that result, see *Reg.* v. *Blizard*, L. R. 2 Q. B. 55.

consented to his nomination as a candidate, or accepted the office, in which case the costs shall be in the discretion of the Judge. (*a*) 46 V. c. 18, s. 203.

Costs generally.

206. In all cases not otherwise provided for, costs shall be in the discretion of the Judge. (*b*) 46 V. c. 18, s. 204.

(*a*) The rule is, that the costs of a contested election are in the discretion of the Judge. Sec. 206. The exception is, where a regular disclaimer is made within the time limited for the purpose, in which case no costs, are to be awarded against the party who disclaims. If however, the Judge be satisfied that the party "consented to his nomination as a candidate, or accepted the office," the case comes within the rule and not the exception. Where defendant personally contested the election, but on its being moved against sent in a disclaimer praying to be relieved from costs, because, having been duly elected, he was obliged, under a penalty, to accept office, the learned Judge in Chambers refused to relieve him of costs. *Reg. ex rel. Featherstone* v. *McMonies*, 2 C. L. Chamb. R. 137. But if the defendant disclaim in proper time, and be free from any imputation of blame, it is not usual to give costs against him. *Reg. ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89. If the disclaimer be filed too late, clearly costs are in the discretion of the Judge. *Ex rel. Hawke* v. *Hall*, 2 C. L. Chamb. R. 182. On the 4th March the relator obtained a summons to contest defendant's election, and the writ and statement were served on that day. On the 9th defendant sent a written disclaimer to the Judge in Chambers, which was received on the 10th, and on the 13th the relator's affidavit was filed stating that defendant had consented to his own nomination, and had taken his seat, &c. No proof of the grounds taken in the statement was ever filed, and the case was then allowed to drop. On the 27th April, the relator filed a further affidavit stating that after the disclaimer the reeve had ordered a new election, at which he, the relator, was duly elected, but that the defendant persisted in retaining his seat, contending that it had not become vacant by his disclaimer. Sir J. B. Robinson under these circumstances, refused to give judgment, as if the matter were still pending on the summons, there being no proof of any of the objections taken, but held that the disclaimer could not nullify the election, as the parties seemed to have supposed; and that if the council should support the relator in his seat, the defendant or some one else must move against his election on the ground that it was illegally ordered. *Reg. ex rel. Freeman* v. *Jones*, 1 P. R. 306. The Judge who was in Chambers at the return of the summons, might perhaps enter an adjournment to a certain day, and call for proofs as to the first election, and give judgment. *Ib.*

(*b*) The Judge has a discretion to withhold costs altogether from either side, if he see fit. *Reg. ex rel. Swan* v. *Rowat*, 13 U. C. Q. B. 340, or to distribute the costs, that is, to order each party to pay his own costs. *Per* Hagarty, J., *Reg. ex rel. Gordanier* v. *Perry*, 3 U. C. L. J. 90. They are absolutely in his discretion: *Lovering* v. *Dawson*, L. R. 10 C. P. 726. Where it was sworn that intending voters for a candidate were obstructed in the approach to the polling place by a crowd under the control of one of the success-

207. The decision of the Judge shall be final, and he shall, immediately after his judgment, return the writ and judgment, with all things had before him touching the same, into the Division from which the writ issued, there to remain of record as a judgment of the High Court; (c) and he shall, as occasion requires, enforce the judgment by a writ in the

Judgment to be final and to be returned to the Court.

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ful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election as to him was set aside with costs. *Reg. ex rel. Gibbs* v. *Branighan*, 3 U. C. L. J. 127. The tendency of modern decisions is not to make a party pay costs unless it be shewn that he himself participated in the improper conduct for which the election is set aside. *Reg. ex rel. Kirk* v. *Asselstine*, 1 U. C. L. J. 49; *Reg. ex rel. Davis* v. *Wilson Ib.* 165; *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218; *Reg. ex rel. Johnson* v. *Murney*, 5 U. C. L. J. 87. But relators are not to be discouraged from bringing cases of invalid elections under notice of a Judge at the peril of having to lose the costs necessarily incurred. *Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126; *Reg. ex rel. Charles* v. *Lewis*, 2 C. L. Chamb. R. 177; *Reg. ex rel. Hawke* v. *Hall*, *Ib.* 187; *Reg. ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137. In one case a learned Judge refused to make a relator pay costs, though unsuccessful, where it was shewn he had acted in good faith in bringing forward his complaint. *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60. So where a returning officer, made a party to the proceedings, was shewn to have acted in good faith, though illegally, costs were not imposed upon him. *Reg. ex rel. Pomeroy* v. *Watson*, 1 U. C. L. J. 48; *Reg. ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89. Where the returning officer was acquitted of blame, and relator's statement was shewn not to be strictly correct, the latter was ordered to pay costs to the former. *Reg. ex rel. Hawke* v. *Hall*, 2 C. L. Chamb. R. 182. But a returning officer, who received illegal votes not on the roll was ordered to pay costs. *Reg. ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87. The Master, on taxing costs to the successful party, should consider whether or not the successful party produced an unnecessary number of affidavits, or affidavits unnecessarily diffuse, and act accordingly. *Reg. ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138. A by-law to pay the costs of a contested election is illegal, and will be quashed with costs. *In re Bell* v. *Manvers*, 2 U. C. C. P. 507. A municipality cannot legally support such a contest, or indemnify one of the parties. *Ib.* But the cost of litigation undertaken *bona fide*, and on reasonable grounds, for the assertion or defence of corporate rights, may be paid out of corporate funds. *Reg.* v. *Bridgewater*, 10 A. & E. 281; *Reg.* v. *Lichfield*, 4 Q. B. 893; *Reg.* v. *Leeds*, *Ib.* 796; *Reg* v. *Warwick*, 12 L. J. Q. B. 306; *Attorney-General* v. *Wigan*, 1 Kay 268; *Lewis* v. *Rochester*, 9 C. B. N. S. 401; *Reg.* v. *Tamworth*, 19 L. T. N. S. 434.

(c) Formerly leave was given to appeal to the full Court. *Reg. ex rel. McKean* v. *Hogg*, 15 U. C. Q. B. 140. That privilege was in the Municipal Institutions Act of 1858, when introduced, but was struck out in Committee. The object, no doubt, is promply to ensure relief. See *Reg. ex rel. Grant* v. *Coleman*, 7 A. R. 619.

Mode of enforcing judgment.

nature of a writ of peremptory *mandamus*, (*cc*) and by writs of execution for the costs awarded. (*d*) 46 V. c. 18, s. 205.

The Judges to make rules, etc.

208. The Judges of the High Court or a majority of them, may, by rules settle the forms of the writs of summons, *certiorari*, *mandamus* and execution under this Act, (*e*) and may regulate the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same, or any other writ or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such elections or appointments, and respecting the costs thereon; and may from time to time rescind, alter, or add to such rules; but all existing rules shall remain in force until rescinded or altered as aforesaid. 46 V. c. 18, s. 206.

Division IX.—Prevention of Corrupt Practices.

Bribery and undue influence defined. *Secs.* 209, 210.
Certain payments lawful. *Sec.* 211.
Evidence to be viva voce. *Sec.* 212.
Effect of the conviction of candidate for bribery. *Sec.* 213.
Penalties. *Sec.* 214.
How penalties recoverable. *Sec.* 215.
Report and record of convictions. *Secs.* 216, 217.
Witnesses, how procured—Self-crimination or privilege not to excuse from giving evidence. *Secs.* 218, 219.
Proceedings, within what time to be taken. *Sec.* 220.
When penalties not recoverable. *Sec.* 221.
Publication of the law against corrupt practices. *Sec.* 222.

(*cc*) It is now provided by Rule 1044 that the Judge's order shall have the same force and effect as a writ of mandamus formerly had in the like case. See note (*z*) to sec. 198.

(*d*) The power of a Judge to award costs for or against a relator, defendant or returning officer, is in general exercised only on the final determination of the case. *Reg. ex rel. Arnott* v. *Marchant*, 2 C. L. Chamb. R. 167.

(*e*) The following may be the form of *fi. fa.* for costs:

Victoria, &c.

To the Sheriff of the County (*or* United Counties) of——, Greeting

We command you, that you levy, or cause to be levied, of the goods and chattels of *A. B.*, late of——, the sum of ——, which hath lately been adjudged to *C. D.*, of ——. in our High Court of Justice, at Toronto, according to the form of the statute in such cases made

209. The following persons shall be deemed guilty of bribery, and shall be punished accordingly :— (*f*) Certain persons to be deemed guilty of bribery.

1. Every person who, directly or indirectly, by himself, or by any other person in his behalf, (*g*) gives, lends or agrees Giving money to voters, etc.

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and provided, for his costs by him laid out and expended in his defence upon a certain proceeding in the nature of a *quo warranto*, taken in our said Court against the said *C. D.*, upon the relation of the said *A. B.*, for usurping the office of ——, in our—— of——, in your County (*or* Counties) (*if the Returning Officer has been made a party, add here*, " to which proceeding *E. F.*, the Returning Officer at the election of the said *C. D.* to the said office was made a party ") whereof the said *A. B.* is convicted, as in our said Court appears of record ; and that you have that money before our said Court, at Toronto, immediately after the execution hereof, to satisfy the said *C. D.*, for his costs aforesaid, and have you then there this writ.

Witness, &c.

N. B.— When the Returning Officer has been made a party, and is entitled to costs, the fieri facias *must be framed accordingly.*

(*f*) Bribery was an offence at Common Law and independently of any statute. *Rex* v. *Pitt*, 3 Burr. 1338. So the mere offer of a bribe was at Common Law an offence. *Rex* v. *Vaughan*, 4 Burr. 2500. But in order, if possible, effectually to put it down, the Legislature has from time to time interfered. In the year 1854 the Imperial Legislature passed an Act in which it was recited " that the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient." 17 & 18 Vict., ch. 102. In the hope of remedying the insufficiency of the law the statute called " The Corrupt Practices Prevention Act, 1854," was framed. *Ib.* Its provisions were embodied in statutes of the late province of Canada and of the legislature of Ontario, as regards parliamentary elections Stat. Can. 23 Vict. c. 17 ; Stat. Ont. 32 Vict. c. 21, s. 67, and in 1872 were applied by the local legislature to municipal elections. 35 Vict. c. 36. The sections here annotated are substantially the same as the provisions of the Imperial statute 17 & 18 Vict. c. 102. Formerly bribery at municipal elections was the subject of legislative interference. *Reg. ex rel McKeon* v. *Hogg*, 15 U. C Q. B. 140. Each act of bribery is a distinct offence. *Milnes* v. *Bale*, L. R. 10 C. P. 591.

(*g*) It is perfectly clear that the meaning which is to be given in this Act to the words " any other person on his behalf," is every person other than the candidate for whose act he is responsible. *Per* Martin, B., in *Norwich Election Petition*, 19 L. T. N. S. 617. In parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election he is responsible for the act of that agent, though he himself did not intend to authorize it. *Taunton Case*, 1 O'M. & H. 182; *West Toronto Case*, 1 H. E. C. 97 ; *Cornwall Case*, 1 H. E. C. 547 ; *Muskoka and Parry Sound Election*, 1 E. C. 197. It is, in point of fact, making the relation between a candidate and his agent the

Procuring office, etc., for voters.

to give or lend, or offers or promises money or valuable consideration, or gives or procures, or agrees to give or procure, or offers or promises, any office, place or employment to or for any voter, or to or for any person on behalf of any

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relation of master and servant, and not of principal and agent. *Westminster Case*, 1 O'M. & H. 95; *Wigan Case*, *Ib.* 191. A variety of cases might be put, in which a principal is liable even civilly for an act of an agent which he never intended, and at which he is exceedingly displeased. See *Westbury Case*, *Ib.* 54. A well established case of bribery by an agent avoids an election, even though the agent acted against instructions. *South Grey Case*, 1 H. E. C. 52. But an agent who is not a general agent, but an agent with powers expressly limited cannot bind the candidate by anything done beyond the scope of his authority. *Berthier Election*, 9 S. C. R. 102. It is as regards elections for the local legislature, expressly declared that "where it is found, upon the report of a Judge upon an election petition, that any corrupt practice has been committed by a candidate at an election, *or by his agent*, whether with or without the actual knowledge and consent of the candidate, the election of the candidate, if he has been elected, shall, except in the cases mentioned in section 163, be void." Rev. Stat. 1887, c. 9, s. 162. Agency is a result of law to be drawn from the facts in the case, and from the acts of individuals. *Sligo Case*, 1 O'M. & H. 301. There is always a great difference in the degrees of agency. As you go lower down, you require more distinctly to shew that the act was done by a person whom the candidate would be responsible for; as you come higher up, it is more as if the candidate had done it himself. *Hereford Case*, *Ib.*, 194. No one can lay down a precise rule as to what would constitute evidence of being an agent. *Bewdley Case*, *Ib.*, 17; *S. C.* 18 L. T. N. S. 676; *Bridgewater Case*, 1 O'M. & H. 115. A man's wife, if she interfere in the election, is *ipso facto* his agent. *Cashel Case*, *Ib.* 288. It may be said that an act, however trifling, is evidence of agency, and that an aggregate of isolated acts will by their cumulative force constitute agency. *Bewdley Case*, *Ib.* 18. Agency in election matters is a result of law to be drawn from the facts of the case and the acts of the individuals. *East Peterborough Case*, 1 H. E. C. 245. See also *Muskoka and Parry Sound Election*, 1 E. C. 197; *West Simcoe Election*, 1 E. C. 126; *West Northumberland Election*, 10 S. C. R. 635. Canvassing alone, and with or without a canvassing book, is evidence of agency. *Staleybridge Case*, 1 O'M. & H. 68; *Lichfield Case*, *Ib.* 25; *Windsor Case*, 19 L. T. N. S. 613; *Londonderry Case*, 21 L. T. N. S. 709; *Cornwall Case*, 1 H. E. C. 547. But canvassing, independently of the candidate, and for an independent association, rebuts the inference of agency. *Westminster Case*, 1 O'M. & H. 91. "I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes, and to make speeches in his favour, can force himself upon the candidate as an agent." *Per* O'Brien, J., *Londonderry Case*, 21 L. T. N. S. 712. See also *Prescott Election*, 1 E. C. 88. A supporter of a candidate who accompanied the candidate in a sleigh saying to some cabmen, "Boys, follow me," does not sufficiently constitute him the agent of the candidate so as to affect him with illegal acts. *Reg. ex rel. Thompson* v.

voter, or to or for any person in order to induce any voter to vote or refrain from voting at a municipal election, or upon a by-law for raising money or creating a debt upon a municipality or part of a municipality for any purpose whatever, (*h*) or who corruptly does any such act as aforesaid, on account of such voter having voted or refrained from voting at such election, or upon such by-law ; (*j*)

Medcalf, 11 U. C. L. J. N. S. 248. Ratification by the principal after the act is equivalent to a previous authority. *Tamworth Case*, 1 O'M. & H. 80 ; *Blackburn Case*, *Ib.* 200. Agency ceases with the election. *Salford Case*, *Ib.* 137 ; *King's Lynn Case*, *Ib.* 208 ; *Bridgewater Case*, *Ib.* 114 ; *North Ontario Election*, 1 E. C. 1. Conversation after the election is over is inadmissible without previous proof of agency. *Waterford Case*, 2 O'M. & H. 3.

(*h*) This section gives a new and enlarged definition of bribery. An *offer* is included in the definition. See *Bush* v. *Ralling*, Sayer, 289 ; *Sulston* v. *Norton*, 3 Burr. 1235 ; *Harding* v. *Stokes*, 2 M. & W. 233 ; *Henslow* v. *Fawcett*, 3 A. & E. 51. "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money." *Coventry Case*, 1 O'M. & H. 107 ; *Staleybridge Case*, *Ib.*, 66 ; see also *Taunton Case*, *Ib.* 183 ; *Cornwall Case*, 1 H. E. C. 547. Offering to accept a public office in the election of the people at a reduced salary may be deemed bribery. *State ex rel. Newell* v. *Purdy*, 17 Am. 485. The *evidence* to prove an offer is usually required to be stronger than when money has actually passed. *Cheltenham Case*, 1 O'M. & H. 64. Money given to a *disqualified* voter is apparently within the terms of the Act. *Guildford Case*, *Ib.* 15. Where money was paid to voters for services agreed to be rendered but such services were not rendered owing to the misconduct of the voters, the payment was not bribery. *West Toronto Case*, 1 H. E. C. 97. The section speaks of the giving, lending, or agreeing to give, or lend "money or valuable consideration," or "office, place or employment." "Anything, great or small, which is given to procure a vote," is a bribe. *Coventry Case*, 1 O'M. & H. 100. The promise of refreshment is bribery. *Bodmin Case*, *Ib.* 124. So a promise before a poll to repay a voter after the poll the money expended by him upon drink. *Hastings Case*, *Ib.* 218. It matters not how long before the election the promise may have been made. *Sligo Case*, *Ib.* 302. Betting on the result of an election may be held to be bribery. *Lincoln Election*, 1 H. E. C. 489 ; *South Norfolk Election*, 1 H. E. C. 660 ; *West Northumberland Election*, 10 S. C. R. 635. The charge of bribery, however, is one that ought to be established by clear and satisfactory evidence. *Londonderry Case*, 1 O'M. & H. 278. Mere suspicion of bribery is not enough to upset an election. *Ib.* The judge should be satisfied beyond doubt that the offence is made out. *Lichfield Case*, 20 L. T. N. S. 11.

(*j*) If the money be given *before* the election, to induce a man to vote or refrain from voting, the act is *ipso facto* bribery. But if *after* the election, it must be shown to have been done "*corruptly*." An act done corruptly means an act done by a man knowing that he

Or for persons influencing voters.

2. Every person who, directly or indirectly, by himself or by any other person in his behalf, (*k*) makes any gift, loan, offer, promise or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in any municipal council, or to procure the passing of any by-law as aforesaid, or the vote of any voter at a municipal election, or for such by-law ; (*l*)

Corruptly influencing voters.

3. Every person who, by reason of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises, or endeavours to procure the return of any

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is doing wrong, and doing it with an evil object. *Bradford Case*, 1 O'M. & H. 37. Corruptly means to influence votes. *Cheltenham Case*, *Ib.* 64. "To produce the result which the Legislature intended to forbid." *Wallingford Case*, *Ib.* 60. Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect on the election. *Hereford Case*, *Ib.* 195. The Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way, that he ought to impute, to the person who has done so, a criminal intention in doing it. *Bodmin Case*, *Ib.* 125.

(*k*) See note *g* to sub. s. 1 of this section.

(*l*) This sub-section is aimed at that offence which is known in England as "purchasing a borough." Of late such transactions have been very rare. An instance of it was exposed in 1858. The Committee in the Harwich Election, reported that G. W. P. was not duly elected ; that G. W. P. entered into an engagement with J. A., through his solicitor, in accordance with the terms of which engagement the said G. W. P. was on his part to pay certain sums of money in the event of his return, and the said J. A. was to endeavour to procure the return of the said G. W. P. for the said borough. Clerk on Elections, 99. In the *Barnstaple Case*, 2 P. R. & D. 336, an agreement was proved in the following form :—"I will pay £400 and £1000 within a week after the election at B." C., It was proved had been very active in averting the threatened disfranchisement of the borough, and incurred expenses to the amount of £1,400 in so doing. It was in respect of this bill that the agreement was made. C. swore that it was no part of the understanding that he should procure L.'s return. But the election was held void. The fair payment of the expenses of a member, if he will stand, does not of itself constitute an illegality under this provision, although it constitutes a case calling for a full inquiry. *Coventry Case*, 1 O'M. & H. 97. If the inquiry, according to what the learned Judge said had shewn that E. had agreed to give H. £5, he might say a farthing, in point of law,—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the electors of Coventry, and of advancing E.'s interest as a candidate at the election, it would have been bribery, and would have avoided the election. *Per* Willes, J., *Ib.* 100.

person in a municipal election, or to procure the passing of any by-law as aforesaid, or the vote of any voter at a municipal election, or for such by-law; (*m*)

Advancing, etc., money for bribery, etc.

4. Every person who advances or pays, or causes to be paid, money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at a municipal election, or at any voting upon a by-law as aforesaid, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at such election, or at the voting upon such by-law; (*n*)

Voter receiving money, etc. for vote, or agreeing for money to vote, etc.

5. Every voter who, before or during a municipal election, or the voting on such by-law, directly or indirectly by himself or any other person in his behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or refraining or agreeing to refrain from voting at such election, or upon such by-law; (*o*)

(*m*) The transaction intended by this and the preceding sub-section is one and the same. But while the preceding sub-section makes illegal the conduct of the giver, this makes illegal the conduct of the receiver. See the last note.

(*n*) The object of this sub-section is to prevent the expenditure of money for purposes of bribery. If advanced or paid *before* the election, *with intent* that it shall be expended in bribery, it is illegal. If *knowingly* paid *after* the election in discharge of money expended in bribery, it is illegal. The word "knowingly," in this sub-section, is used very much in the same sense as the word "corruptly" is used in the latter part of sub-section 1. It is by no means an uncommon practice for a candidate to pay a large sum of money into the hands of two or three persons, or into the hands of a banker, with permission to certain persons to draw upon such sum of money. This occurs most frequently at elections where it is considered expedient that the candidate should know as little as possible of the means used to procure his return. Were the money so paid in to be expended wholly or partly in bribery, would such a candidate be guilty of bribery within the statute? Such conduct would be very suspicious, to say the least of it. See Clerk on Elections, 101; see also remarks of Richards, C. J., *East Toronto Case*, 1 H. E. C. 70.

(*o*) While the preceding sub-sections relate more especially to the candidates and to persons acting on their behalf, this sub-section applies only to voters. The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless by express enactment. There are other persons

Receiving money, etc., after the election for voting, or inducing, etc., to vote.

6. Every person who, after such election, or the voting upon such by-law, directly or indirectly, by himself or any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at such election, or upon such by-law; *(p)*

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interested and affected by the vote beside the voter. The candidate for whom he voted is interested in it, and so are the whole body of the electors who voted for the same candidate. One vote may change the result of an election, and the deprivation of the right to vote is not to be brought about by mere inference as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and as a consequence to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote. *Per* Richards, C. J. in *Brockville Election*, 32 U. C. Q. B. 139. Either taking or giving a bribe invalidates a vote on a scrutiny. *Southampton Case*, 1 O'M. & H. 224. A man who votes for one candidate after having received money to vote for another is as much guilty of bribery as if he had done what was expected of him. *Lichfield Case*, *Ib.* 29. To take pay for a day's wages is bribery. *Stalybridge Case*, *Ib.* 66; see also *Taunton Case*, *Ib.* 183. So payment of a debt for which the voter was incarcerated. *Londonderry Case*, 21 L. T. N. S. 709; *S. C.* 1 O'M. & H. 275; see further *Harding* v. *Stokes*, 2 M. & W. 233; *Reg.* v. *Thwaites*, 1 E. & B. 704; *London Election*, 1 H. E. C. 214. The question is not what is the motive operating on the mind of the voter. The mind of the voter has nothing to do with it. The question is the motive of the person bribing. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote. *Westminster Case*, 1 O'M. & H. 95; see also *Cashel Case*, *Ib.* 289. A conditional inducement of any kind to induce a voter to vote or refrain from voting is bribery. See *Simpson* v. *Yeend*, L. R. 4 Q. B. 626. Payment of travelling expenses to induce the voter to vote is bribery. *Dublin Case*, 1 O'M. & H. 273. It is not decided that payment afterwards, without a previous promise, is bribery. *Northallerton Case*, *Ib.* 167. Colourable employment of a voter is bribery. *Penryn Case*, *Ib.* 128. So lavish household expenditure if intended to influence votes. *Hastings Case*, *Ib.* 218. Admissions by a voter that he has been bribed are evidence to invalidate his vote on a scrutiny. *Windsor Case*, *Ib.* 5; *King's Lynn Case*, *Ib.* 208. Votes given for a candidate after an act of bribery has been committed by him, or on his behalf, are not null and void, but merely unavailable for the purpose of the election,—his status as a candidate being annihilated by the act of bribery. *Norwich Election Petition*, 19 L. T. N. S. 619. The votes remain as good to be struck off by the party claiming the seat. *Ib.*

(p) The word "corruptly," as used in the first sub-section is not repeated here, but is involved in the language used. To receive after

7. Every person who hires horses, teams, carriages or other vehicles for the purpose of conveying electors to or from the polls, and every person who receives pay for the use of any horse, teams, carriages, or other vehicles, for the purpose of conveying electors to or from any polls as aforesaid. (*q*) 46 V. c. 18, s. 207. Hiring teams, etc.

210. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction, by himself or by or through any other person, of any injury, damage or loss, or in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from Persons using violence or intimidation to be guilty of undue influence.

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an election, money or valuable consideration "on account of any person having voted or refrained from voting," &c., is to receive it corruptly. See note *j* to sub-s. 1 of this section.

(*q*) For a long time doubts existed as to whether the hiring of teams and vehicles to convey voters to and from the polls was legal or not. The doubts were removed in the case of elections for the Local Legislature by sec. 71 of 32 Vict. ch. 21, Ont., (now R. S. O. c. 9 s. 157.) This sub-section makes it an offence for *any one* to hire or to receive pay for teams and vehicles used in conveying voters to the poll. To bring a case under the Ontario Election Act there must be a hiring on the part of the candidate or his agent, or receiving pay for the use of horses, teams, carriages, or other vehicles for the purpose mentioned. One M., a carter, who voted for respondent at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying he would do so without charge. Some days after the election P. gave M. $2, intending it as compensation for such carriage, but M. thought it was in payment for work which he had done for P. as carter. The candidate knew nothing of the matter. *Held*, that there was not properly any payment by P. to M. for any purpose, the money having been given for one purpose and received for another. *In re Brockville Election*, 32 U. C. Q. B. 132. But even if there had been such a payment, it was made after P.'s agency had ceased, and as there was no previous hiring or promise to pay to which it could relate, it was held not to come under the operation of the statute. *Ib.* If such payment had been established it would have avoided P.'s vote, but not M.'s. *Ib.* See further the remarks of Richards, C. J., as to the hiring of cabs, &c., in *West Toronto Case*, 1 H. E. C. 97. A candidate is under no obligation, legal or moral, to pay for loss of time of voters or their travelling expenses. Per Watson, B., in *Cooper* v. *Slade*, 6 H. L. Cas. 754. The payment of a voter's expenses in going to the poll is illegal as such, even though the payment may not have been intended as a bribe. *South Grey Election*, 1 H. E. C. 52. If made on condition of his voting it is bribery. *Cooper* v. *Slade*, 6 H. L. Cas. 754. See further *Reg. ex rel. Thompson* v. *Medcalf*, 11 U. C. L. J. N. S. 248.

voting at any election, or who in any way prevents or otherwise interferes with the free exercise of the franchise of any voter, shall be deemed to be guilty of undue influence, and be subject to the penalty hereinafter mentioned. (*r*) 46 V. c. 18, s. 208.

(*r*) Intimidation may be either general or particular. The great object of the Legislature is to secure freedom of election. "In order to avoid an election on the ground of intimidation, it must be shewn that the rioting or violence was instigated by the member or his agents, for whom he is responsible; or it must be shewn it was to such an extent as to prevent the election being an entirely free election." *Staleybridge Case*, 1 O'M. & H. 72. The common law renders an election carried by violence, force or intimidation void, because the freedom of election is violated, and persons are prevented from freely exercising their franchise and giving their votes. *Cheltenham Case*, *Ib.* 64. If the intimidation be so general that the election cannot be said to be a free one, in that case, though it is not brought home to the candidate or his agents, the election would be void. *Stafford Case*, *Ib.* 229. General intimidation must be put on a parallel with general bribery or general treating; that is, it must be shewn to spread over such an extent of ground, and to permeate through the community to such an extent, that the tribunal considering the case is satisfied that freedom of election has ceased to exist in consequence. *Drogheda Case*, *Ib.* 259. With respect to particular voters, the Legislature has used language which makes it undue influence to practice intimidation, directly or indirectly, with intent to influence the vote of a single voter. Whether the voter be the person ill-treated, or whether the ill-treatment be violence, or damage done by the removal of custom, business, or employment, is immaterial; if it is done with a view to affect the voter or interfere with the free exercise of the franchise, it is within the prohibition of the Act. *Blackburn Case*, *Ib.* 204; *North Ontario Case*, H. E. C. 785. The question whether a man made a free vote is something like the question whether a man made a free will. *Windsor Case*, *Ib.* 6. Threats of eviction by landlords. *Reg.* v. *Barnwell*, 5 W. R. 557. Threats to suspend or refuse the rites of the Church. *Galway Case*, 1 O'M. & H. 303; see also *Longford Case*, 2 O'M. & H. 16; *Tipperary Case*, *Ib.* 31. Threats of dismissal from employment; *Westbury Case*, 1 O'M. & H. 50; discharge of servants; *Blackburn Case*, *Ib.* 203; *North Norfolk Case*, *Ib.* 241, or other wrongs or injuries of a similar character, if made in order to influence the vote, constitute undue influence. Where an injury has been actually inflicted the proof is comparatively easy, but where merely a threat has been made, and not executed, the point is often difficult to determine. *North Norfolk Case*, *Ib.* 242. If the threat be proved, the onus is upon those who made the threat or who are responsible for it, to shew that intimidation did not produce its natural consequence, namely, terrifying the people from the exercise of their legitimate franchise. *Drogheda Case*, *Ib.* 256. A mere attempt to intimidate a voter, even though unsuccessful, would avoid an election. *Northallerton Case*, *Ib.* 173. See also *Soulanges Election*, 10 S. C. R. 652.

Expenses of candidates.

211. The actual personal expenses of a candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be the expenses lawfully incurred, and the payment thereof, shall not be a contravention of this Act. (*s*) 46 V. c. 18, s. 209.

Evidence of corrupt practices on application in nature of *quo warranto* to be taken *viva voce*.

212. Where, in an application in the nature of a *quo warranto*, a question is raised as to whether the candidate or any voter has been guilty of any violation of section 209 or 210 of this Act, affidavit evidence shall not be used to prove the offence, but it shall be proved by *viva voce* evidence taken before the Judge of any County Court, upon a reference to him by the Judge of the High Court for that purpose, or upon an appointment granted by him in cases pending in such County Court. (*t*) 46 V. c. 18, s. 210.

(*s*) The candidate is not restricted to purely personal expenses, but may (if there is no intent thereby to influence votes) hire rooms for committees and meetings, and employ men to distribute cards and placards, and perform similar services. *East Toronto Case*, 1 H. E. C. 70. A candidate in good faith intended that his election should be conducted in accordance both with the letter and spirit of the law, and himself paid no money except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid. The election, notwithstanding, was supported. *Ib.* Under the *Ontario Election Act* candidates are required to pay money for election purposes through an authorized agent, and to render detailed accounts of the expenditure. See Rev. Stat. c. 9, s. 189, *et seq.* It is always more satisfactory, on an election inquiry to have the expenditure shewn by proper vouchers. See remarks of Chief Justice Richards on *The East Toronto Case*, 1 H. E. C. 70, and *The West Toronto Case*, 1 H. E. C. 97. Where all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct. *South Grey Case*, H. E. C. 52. Where a candidate puts money into the hands of an agent, and exercises no supervision over the way in which the agent is spending the money, but accredits and trusts him and leaves him the power of spending the money, there is such an agency established as to render the candidate liable to the fullest extent, not only for what the agent may do but also for what all the people that agent employs may do, although express instructions be given that none of the money should be improperly spent. *Ib.*

(*t*) The Judge whose duty it is to try an ordinary application in the nature of a *quo warranto*, may inquire into the facts either by affidavit or by oral testimony. See sec. 197. The exception created by this section is, where "any question is *raised* as to whether

Penalty on candidates guilty of bribery, etc.

213. Any candidate elected at a municipal election, who is found guilty by the Judge, upon a trial upon a writ of *quo warranto*, of any act of bribery, or of using undue influence as aforesaid, shall forfeit his seat, and shall be ineligible as a candidate at any municipal election for two years thereafter. (*u*) 46 V. c. 18, s. 211.

Penalty for offences under ss. 209, 210

214. Any person who is adjudged guilty of any offence within the meaning of sections 209 or 210 of this Act, shall incur a penalty of $20, and shall be disqualified from voting at any municipal election or upon a by-law for the next succeeding two years. (*v*) 46 V. c. 18, s. 212.

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the candidate or any voter has been guilty of any violation of sections 209 or 210 of this Act;" in other words, been guilty of bribery or undue influence within the meaning of those sections. In such a case *viva voce* evidence alone can be used. The reason no doubt is, that to charge the candidate or a voter under either of the sections mentioned, is to charge him with an offence which may be either a crime or in the nature of a crime (see sec. 213), and that it would be contrary to all precedent to permit a person to be tried for a crime on what is called in this section "affidavit evidence."

(*u*) The consequences of being found guilty are two-fold:

1. Forfeiture of the seat.

2. Personal incapacity, for two years thereafter, to be a candidate at a municipal election.

It is not said that these consequences shall follow if there be bribery or undue influence by an agent, without the knowledge, or against the instructions of the candidate. It may be that in such a case the seat will be lost to the candidate. See note *h* to s. 209. But it is clear that a man cannot be guilty by his agent of an illegal act, and be held personally responsible, and be personally punished for that act, unless he has given the agent, authority, express or implied, to do the illegal act. The law of agency has certainly, in such cases, been much extended by Committees of the House of Commons. But it is a clear proposition of law, that if a candidate employ an agent for a perfectly legal purpose, and that agent do an illegal act, that act does not affect the principal personally (although it may affect his seat), unless a great deal more be shewn. It must be shewn that the principal directed the agent to do the act, or really meant he should so act. No man who is an agent for a legal purpose can make his principal criminally responsible for an illegal act, unless the principal in some way authorized it. See *per* Lord Wensleydale, in *Cooper* v. *Slade*, 6 H. L. Cas. 793. See further *Dungarvan Case*, 2 P. R. & D. 324, and *Lovering* v. *Dawson*, L. R. 10 C. P. 711. The learned Judge of the County of Simcoe, in *Booth* v. *Sutherland*, 10 U. C. L. J. N. S. 287, held that indirect bribery as bribery by agents, rendered the candidate ineligible for re-election.

(*v*) These penalties, it is presumed, will not follow unless the illegal

Recovery of penalties.

215. The penalties imposed by the preceding section shall be recoverable, with full costs of suit, by any person who sues for the same in the Division Court having jurisdiction where the offence was committed; (*w*) and any person against whom judgment is rendered, shall be ineligible, either as a candidate or a municipal voter, until the amount which he has been condemned to pay is fully paid and satisfied. (*x*) 46 V. c. 18, s. 213.

Judge to make return.

216. It shall be the duty of the Judge who finds any candidate guilty of a contravention of section 209 or 210 of this Act, or who condemns any person to pay any sum in the Division Court for any offence within the meaning of this Act, to report the same forthwith to the clerk of the municipality wherein the offence has been committed. (*y*) 46 V. c. 18, s. 214.

Clerk to keep book showing names of persons guilty of offences, etc.

217. The clerk of every municipality shall duly enter in a book, to be kept for that purpose, the names of all persons within his municipality who have been adjudged guilty of any offence within the meaning of section 209 or 210 of this Act, and of which he has been notified by the Judge who tried the case. (*z*) 46 V. c. 18, s. 215.

Attendance of witnesses

218. Any witness shall be bound to attend before the

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act be shewn to be that of the party sought to be personally affected, or the act of some person who was authorized by him to do it. See the last note.

(*w*) As the pecuniary penalty is only $20, it is believed that the Division Court would have had jurisdiction without this provision; see *Medcalf* v. *Widdifield*, 12 U. C. C. P. 411; but its enactment here, as the point was not entirely free from doubt, *O'Reilly q. t.* v. *Allan*, 11 U. C. Q. B. 526, was proper.

(*x*) The payment of the amount will not remove the disability where the payment is within two years of the conviction. See sec. 214. But the disability continues after the two years and until the judgment is satisfied.

(*y*) The object of this provision is to prevent the person disqualified from being placed upon the voters' list. The clerk upon receipt of the report, should enter the name in a book to be kept for that purpose, and erase the name from the list of voters of the municipality. The former duty is imposed by the next section; the latter, it is apprehended, is an implied duty. So far as the returning officer at an election is concerned, the list is final. See secs. 102, 103.

(*z*) It is presumed, for reasons given in the previous note, that the clerk should also erase the name from the list of voters of the municipality.

Judge of the County Court upon being served with the order of the County Court Judge directing his attendance (*a*) and upon payment of the necessary fees for his attendance, (*b*) in the same manner as if he had been directed by a writ of subpœna so to attend, and he may be punished for contempt, and shall be liable to all the penalties for such non-attendance

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(*a*) The order should be intituled as of the proper Court and cause, and may be directed to the witnesses by name, and after reciting the power of the Judge to take evidence, might conclude as follows :—

You and each of you are hereby required to attend before me at —— on the —— day of —— A. D., 18— at the hour of —— o'clock in the——noon (*or* forthwith), to be examined as a witness in the matter of the said Petition and to attend the said Court until your examination shall have been completed.

As witness my hand.

(Signed)

Judge of the County Court.

This is the form of order in general use under the English Act of 1868, for the trial of controverted elections. Under that Act, counsel applied for an order for the attendance of one J. M. He stated that the process server had used every effort to serve him with a subpœna but without effect, though there was reason to believe he was in the house. The application was granted. *Waterford Case*, 2 O'M. & H. 3. In one case in proof by a witness that T. W. was keeping out of the way to avoid being served with a subpœna, application was made for an order for the attendance of his wife, who had not been subpœnaed, but the judge (Martin, B.) said that he had no power to grant such an order unless the wife had been subpœnaed. *Norwich Case*, 1 O'M. & H. 8. Upon another witness (Mrs. H., who had been subpœnaed as a witness) being called and not answering, the same learned Judge is reported to have said, "I will make an order for her to come. If witnesses will not come, I will immediately make an order for them to come." *Ib.* In one case where counsel for the respondent stated that he would require the attendance of a witness who had been previously called by the petitioners, (the learned Judge, Fitzgerald, B.,) said, "You had better write a letter to M., and he must be brought back at the respondent's expense." On the following day M. was called, but did not appear, and an order was granted for his attendance. *Longford Case*, 2 O'M. & H. 12. Where it was shewn that one of the hands on a steamboat, then at the wharf in the town, was a material witness, an order was made for his attendance ; and upon the captain of the boat refusing to allow him to be served or to give any information about him, an order was made for the attendance of the captain. *South Grenville Case*, August, 1872, not reported on this point.

(*b*) When the witness, at the close of his examination, asked for his expenses, the Judge (Willes, J.) allowed him his expenses as he had been called by himself, but intimated that if any other witness desired to be paid his expenses, he should make the demand before he was sworn.

in the same manner as if he had been served with a subpœna. (*c*) 46 V. c. 18, s. 216.

Witnesses not excused from answering on grounds of self crimination or privilege.

219. No person shall be excused from answering any question put to him in any action, or other proceeding in any Court or before any Judge, touching or concerning any election, or by-law, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to the question will tend to criminate such person; (*d*) but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will subject him to any penalty under this Act, shall be used in any proceeding under this Act, against such person, (*e*) if the Judge gives to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answer, to the satisfaction of the Judge. (*f*) 46 V. c. 18, s. 217.

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(*c*) Quære, should the process for contempt be issued by the Judge presiding at the trial, or from the office of the court in which the petition has been filed. Unless the former, there would be great delay in enforcing the attendance of a witness ordered to attend.

(*d*) At common law, a witness is entitled to refuse to answer any question that may tend to criminate him, not only because the answer itself might be evidence against him, on a criminal charge, but because it might furnish a link in the chain of testimony which might implicate him in such charge. See *Keith* v. *Lynch*, 19 Grant 497; See further, *Emery's Case*, 9 Am. 22; *Reg.* v. *Roddy*, 41 U. C. Q. B. 291. The object of this section is to infringe to a certain extent, on these principles of the common law. Election Committees, Judges, and Election Commissioners must make their inquiries among persons who are generally expected to be hostile and unwilling to tell the truth, and who, if the common law were left untouched, would be always entitled to say, "I will answer no such question," and so the inquiry would be baffled. Therefore the Legislature, has enacted that the tendency of the answer to expose the witness to a criminal charge, should not, be any excuse for not answering the question. See *per* Blackburn, J., in *Reg.* v. *Hulme*, L. R. 5 Q. B. 383, 384.

(*e*) The Legislature, having taken away from the witness the common law immunity against criminating himself, here gives him an immunity on certain conditions. *Reg.* v. *Hulme*, L. R. 5 Q. B. 384.

(*f*) If the witness has really complied with the conditions he is entitled to a certificate, and the Judge has no right to refuse it. *Reg.* v. *Price*, 22 L. T. N. S. 12. The conditions are not only that he claimed the certificate, but "made full *and* true answer *to the satisfaction of the Judge*." The obligation intended to be thrown

Limitation of actions.

220. All proceedings other than an application in the nature of *quo warranto* against any person for any violation of section 209 or 210 of this Act, shall be commenced within four weeks after the municipal election at which the offence is said to have been committed, or within four weeks after the day of voting upon a by-law as aforesaid. (*g*) 46 V. c. 18, s. 218.

No statutory penalty for corrupt practices at elections, where the party charged has first prosecuted a party jointly liable.

221. No pecuniary penalty or forfeiture imposed by this Act or any other Act of the Legislature of Ontario, shall be recoverable for any act of bribery or corrupt practice at an election, in case it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the said act; but this provision shall not apply in

Proviso.

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upon the person who is called as witness is, that he shall make full and true answer to the question put to him. If the evidence given be false there is no protection, and the witness is undoubtedly liable to be prosecuted for perjury. See *Reg.* v. *Brittle*, L. R. 1 C. C. 248. A certificate in the following form: "We do hereby certify that J. H. was sworn and examined upon oath before us as such commissioners, and, upon such examination, was required by us to answer questions the answers to which tended to criminate him, and answered all such questions; but divers of the said answers to the said questions were unsatisfactory to us, and we believe were false, and false to the knowledge of him, the said J. H.,"—is not such a certificate as is required by the Act, and is no protection. *Reg.* v. *Hulme*, L. R. 5 Q. B. 386. A witness who has received a pardon under the Great Seal is not privileged from answering questions the replies to which may criminate him on the ground that actions for penalties, under the Corrupt Practices Prevention Act, are pending against him. *Reg.* v. *Kinglake*, 22 L. T. N. S. 316. The certificate only protects the witness from the effect of his own evidence and does not free him from the consequence of his own improper conduct.

(*g*) The time limited for a proceeding in the nature of a *quo warranto* is "six weeks after the election," or "one month after the acceptance of office" See sec. 188. This section is intended to apply to proceedings "other than an application in the nature of *quo warranto*" against any person for any violation of the sections mentioned. It is plain, therefore, that the mere fact of raising charges under the sections mentioned, in a *quo warranto* proceeding, is no ground for shortening the ordinary time allowed for such a proceeding. But where the proceeding intended is either an action for a penalty, or an information or indictment for the criminal offence, such proceeding must, in the case of an election, be taken "*within* four weeks after the municipal election," or, in the case of voting on a by-law, "*within* four weeks after the day of voting." As to computation of time, see note *b* to sec. 185.

case the Judge before whom the person claiming the benefit thereof is charged, certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence charged, and that such person was in fact the principal offender. 46 V. c. 18, s. 219.

Copies of ss. 209-222 to be posted up prior to election.

222. The clerk of every municipality shall, prior to any election, or voting on any by-law, furnish every deputy-returning officer with at least two copies of the sections of this Act numbered from 209 to 222 inclusive, and it shall be the duty of the deputy-returning officer to post the same in conspicuous places at the polling place of the polling sub-division for which he is deputy-returning officer. (*h*) 46 V. c. 18, s. 220.

PART IV.

MEETINGS OF MUNICIPAL COUNCILS.

DIV. I.—WHEN AND WHERE HELD.
DIV. II.—CONDUCT OF BUSINESS.

DIV. I.—WHEN AND WHERE HELD.

First and subsequent meetings. *Secs.* 223-230.
Remuneration of members. *Secs.* 231, 232.

First meetings of councils.

223. The members of every municipal council (except county councils) shall hold their first meeting at eleven o'clock in the forenoon, (*i*) on the third Monday of the same January in which they are elected, or on some day thereafter; (*j*) and the members of every county council shall

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(*h*) The object of this provision is to bring home to the electors a knowledge of the highly penal character of the sections as to bribery and undue influence, in the hope that such knowledge will deter them from committing any such offence. The section is directory. See *West Gwillimbury* v. *Simcoe*, 20 Grant 211.

(*i*) An objection, that an election took place at six o'clock instead of at noon on the day appointed for the election, was held to be "too trivial to require serious notice." *Reg. ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.

(*j*) The members of the Council are bound to know the day specially named for the first meeting. See *In re Slavin and Orillia*,

hold their first meeting at two o'clock in the afternoon, or some hour thereafter, (*k*) on the fourth Tuesday of the same month, or on some day thereafter. (*l*) 46 V. c. 18, s. 221.

No business before declarations of office, etc.

224. No business shall be proceeded with at the first meeting of the council, until the declarations of office and qualification have been administered to all the members who present themselves to take the same. (*m*) 46 V. c. 18, s. 222.

Election by county council of a warden.

225. The members elect of every county council, being at least a majority of the whole number of the council when full, (*n*) shall at their first meeting after the yearly elections,

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36 U. C. Q. B. 159. But if the meeting be held on a subsequent day, it would appear to be only reasonable, in order to prevent surprise, that notice should be given of the subsequent day. *Rex* v. *Liverpool*, 2 Burr. 731; *Rex* v. *Doncaster*, *Ib.* 743; *Rex* v. *Theodorick*, 8 East 543; *Rex* v. *May*, 5 Burr. 2682; *Rex* v. *Grimes*, *Ib.* 2601; *Musgrave* v. *Nevinson*, 1 Str. 584; *Kynaston* v. *Shrewsbury*, 2 Str. 1051; *Rex* v. *Hill*, 4 B. & C. 441; *Smyth* v. *Darley*, 2 H. L. Cas. 789; see further, *Rex* v. *Faversham*, 8 T. R. 352; *Rex* v. *Langhorn*, 4 A. & E. 538. Where two members of a village council, being a minority of the whole number when full, met, but, in the absence of the three remaining members, were unable to proceed to business, and on a subsequent day the remaining three members without notice to the two members met and elected one of themselves to be reeve, the election, in the absence of proof of want of *bona fides*, was maintained. *Reg. ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126.

(*k*) See note *i* to this section.

(*l*) See note *j* to this section.

(*m*) It is apprehended that before appointing a presiding officer, when necessary to do so, the members ought to take the necessary declarations. Such an election would, it is believed, be deemed "business" within the meaning of this section. The members of a county council, "after making the declarations of office and qualification when required to be taken," organize themselves as a council by electing a warden. See notes to sec. 225.

(*n*) Thus, assuming the whole number of members of the council to be twelve, there must be seven present to constitute a quorum. *Reg. ex rel. Evans* v. *Starratt*, 7 U. C. C. P. 487. So that an election by six in such a case, though unanimous would be void. See *Lockwood* v. *Mechanics' National Bank*, 11 Am. 253. Acts done with less than a legal quorum are generally void. *Rex* v. *Bellringer*, 4 T. R. 810; *Rex* v. *Miller*, 6 T. R. 268; *Reg. ex rel. Evans* v. *Starratt*, 7 U. C. C. P. 487; see also *Price* v. *R. W. Co.*, 13 Ind. 58; *Ferguson* v. *Crittenden*, 1 Eng. (Ark.) 479; *Logansport* v. *Legg*, 20 Ind. 315; *McCracken* v. *San Francisco*, 16 Cal. 591; *Piemental* v. *San Francisco*, 21 Cal. 351. But in one case the Court, in the exercise of its discretion, refused to quash a by-law upon proof that a quorum was not present at the time of its passing. *Sutherland* v. *East Nissouri*, 10

and after making the declarations of office and qualification when required to be taken, (*o*) organize themselves as a

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U. C. Q. B. 626. The Court will presume, until the contrary be clearly shown, that there was a quorum present at the doing of a corporate act. *Citizens' Mutual Fire Ins. Co.* v. *Sortwell*, 8 Allen (Mass.) 217 ; See also *Southworth* v. *Palmyra and Jackson R. W. Co.*, 2 Mich. 287. Quære, suppose seven present, in the case put of twelve members, would the vote of four be a valid election under this section. This depends on the question whether a majority of the quorum is all that is necessary. It cannot be said that those who vote against a man elect him to office. If three vote against him and four for him, and the latter be sufficient, he would be elected by four when seven are present, when an election by six, when six only are present, would not be sufficient. The question is whether, to entitle a man to the position of warden, he should not have the voices of, in other words, be elected by, a majority of the council when full. Reading this section in connection with sec. 227, it would seem that a majority of the quorum is all that is necessary. See *Southworth* v. *Palmyra and Jackson R. W. Co.*, 2 Mich. 287 ; see also *Ex parte Wilcocks*, 7 Cow. (N.Y.) 402 ; *Buell* v. *Buckingham*, 16 Iowa 284 ; *Regents, &c.* v. *Williams*, 9 Gill & Johns. (Md.) 365 ; *Mills* v. *Gleason*, 11Wis. 470. A majority of those present, when legally assembled, binds the rest. *Rex* v. *Monday*, Cowp. 530, 538 ; *Rex* v. *Devonshire*, 1 B. & C. 609 ; *Rex* v. *Bower*, *Ib.* 492 ; *Rex* v. *May*, 4 B. & Ad. 843 ; *Rex* v. *Greet*, 8 B. & C. 363 ; *Rex* v. *Headley*, 7 B. & C. 496 ; see also *Reg. ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126 ; *Reg. ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.

(*o*) No reeve or deputy reeve is allowed "to take his seat" until he has filed with the clerk of the county council a certificate of the clerk of the local council, under the corporate seal, that such reeve or deputy reeve was duly elected, and made and subscribed the declarations of office and qualification as such reeve or deputy-reeve, sec. 65. In the case of a deputy-reeve, a declaration as to the number of persons on the voter's list is also required. *Ib.* The filing of these papers, and the making of the declarations of office and qualification, when required, are conditions precedent to the election, *In re Hawk and Ballard*, 3 U. C. C. P. 241 ; see also *Reg. ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 23. When the reeve or deputy-reeve has taken his seat, he cannot prevent the carriage of a vote by merely retiring from the council after a motion has been made. *Reg. ex rel. Heenan* v. *Murray*, 3 P. R. 345. But see *The People* v. *Whiteside*, 23 Wend. (N. Y.) 9 ; *S. C.* 26 Wend. (N. Y.) 634. When four members of a village council, being at least a majority of the whole number of the council when full, met, and at their first meeting a resolution, naming one of them as reeve, was put and seconded, and no dissent expressed, whereupon the clerk, in the hearing of all, but while two of the members were retiring from the council chamber, declared the resolution carried, the reeve was held to be duly elected. *Reg. ex rel. Heenan* v. *Murray*, 3 P. R. 345. It is said that if a majority of the members present dissent from an election, but do not vote for any other than the person proposed, the election will be valid. See *Cotton* v. *Davies*,

council by electing one of themselves to be warden. (*p*) 46 V. c. 18, s. 223.

Who to preside at election.

226. At every such election the clerk of the council shall preside, and if there is no clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member. (*q*) 46 V. c. 18, s. 224.

Who to have the casting votes in the event of equality of votes.

227. In case of an equality of votes on the election of the head of any county council, or provisional county council, then of those present, the reeve, or in his absence the deputy-reeve of the municipality which for the preceding year had the greatest equalized assessment, shall have a second and casting vote. (*r*) 50 V. c. 29, s. 7.

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1 Str. 52; *Oldknow* v. *Wainwright*, 2 Burr. 1017. *S. C.* 1 W. Bl. 229. They are taken to assent by not properly dissenting. If a majority of the whole council, when full, be present and vote, it is of no consequence whether the minority were notified or not. *Reg. ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126, even though the election take place at a meeting subsequent to the day fixed by the statute for the holding of the election. *Ib.*

(*p*) What is meant by organizing themselves as a council by electing one of themselves to be warden? The council is a body; the warden is the head thereof. To organize, in such a case, must mean so to bring the parts together as to constitute a body, and this organization is perfected when the head is constituted. But unless the parts come together there can be no such organization. If the members refuse to take their seats, or act as members of the council, members refusing cannot be said to organize themselves. But members not desirous of being counted as of the quorum ought to absent themselves. So long as present, although for the purpose of protesting that they should not be counted, they may be counted as of the quorum. See *Reg. ex rel. Rose* v. *Beach*, argued before Mr. Dalton, May 8th, 1873, affirmed by Gwynne, J. It is believed that a member *de facto* elected warden, is entitled to hold the office until removed by proper process of a proper Court. See *Wandsworth and Putney Gas Light and Coke Co.* v. *Wright* 22 L. T. N. S. 404; See also *Citizens Mutual Fire Insurance Co.* v. *Sortwell*, 8 Allan, (Mass.) 217.

(*q*) There must be a meeting, at which the clerk is to preside. See *Small ex rel. Walker* v. *Biggar*, 4 U. C. Q. B. 497.. When the members have met for the purpose of electing a warden, the clerk of the council is to preside at the meeting. If there be no clerk, the members present are enabled to elect one of themselves to preside. Such member may, however, vote, but not have a casting vote unless he happen to be the reeve or deputy-reeve of the municipality which for the preceding year had the greatest equalized assessment. See sec. 227.

(*r*) See note *j* to sec. 157.

228. The members of every county council shall hold their first meeting at the county hall if there is one, or otherwise at the county court house. (*s*) 46 V. c. 18, s. 226. Place of first meeting.

229. The subsequent meetings of the county council, and all the meetings of every other council shall be held at such place, either within or without the municipality, as the council from time to time, by resolution on adjourning to be entered on the minutes, or by by-law, appoints. (*t*) 46 V. c. 18, s. 227. Place of subsequent meeting of county council, etc

230. The council of any county or township in which any city, town, or incorporated village lies, may hold its sittings, keep its public offices, and transact all the business of the council and of its officers and servants within such city, town or incorporated village, and may purchase and hold such real property therein as may be convenient for such purposes. (*v*) 46 V. c. 18, s. 228. Place of meeting may be in cities, etc.

(*s*) The object of stating *place* as well as *time* of the first meeting is to prevent surprise. See notes to sec. 223. Subsequent meetings, as to time and place, may be regulated by adjournments. See sec. 229.

(*t*) The object of this section would seem to be to enable a county council, to sit in a city or town that has been separated from the county when the proper county buildings are situate therein and are owned by the county. But the language "every *other* council," is broad enough to admit of any municipal council holding sittings elsewhere than within the municipality. The section has not yet been judically interpreted. The meetings are to be held "at such place," &c., as the council, from time to time, by *resolution* on adjourning, to be entered on the minutes, or by *by-law*, appoints. It is apprehended that an established place of meeting would be by by-law, and that, in the absence of any such by-law, the place may be determined for the next meeting by resolution on adjourning, at which time there would be no opportunity of passing a by-law. Strictly speaking, there ought to be either a by-law fixing a permanent place, or a resolution from time to time entered at each adjournment. See *In re Pafford and Lincoln*, 24 U. C. Q. B. 16.

(*v*) Municipal corporations are within the operation of the Statutes of Mortmain. *Brown* v. *McNab*, 20 Grant 179. And these Statutes are held to be in force in Ontario, *Corporation of Whitby* v. *Loscombe*, 22 Grant 203; 23 Grant 1. See further, *Doe d. Anderson* v. *Todd*, 2 U. C. Q. B. 82; *Doe d. Vancott* v. *Read*, 3 U. C. Q. B. 244; *Hallock* v. *Wilson*, 7 U. C. C. P. 28; *Mercer* v. *Hewston*, 9 U. C. C. P. 349. And this being so, the power can only properly be exercised in the limited manner in which it is conferred, *i.e.*, to

Remuneration to councillors and committeemen limited.

231. The council of every township and county may pass by-laws for paying the members of the council for their attendance in council, or any member while attending on committee of the council, at a rate not exceeding $3 *per diem*, and five cents per mile necessarily travelled (to and from) for such attendance. (*w*) 46 V. c. 18, s. 229.

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purchase and hold such real property as may be *convenient for the purposes mentioned*. See *Ketchum* v. *Buffalo*, 14 N. Y. 356. See Dillon on Municipal Corporations, 3rd ed. s. 560, *et seq.* But the right to hold is not one that can ordinarily arise as between vendor and vendee. See *Becher* v. *Woods*, 16 U. C. C. P. 29; *Belleville* v. *Judd*, *Ib.* 397; *Orford* v. *Bailey*, 12 Grant 276. Where the town council of a borough contracted to purchase property held under a sub-lease of a portion of lands comprised in a lease of land demised by the owner of the fee and which were thus subject to a rent in addition to the rent reserved in the sub-lease, and to the covenants and conditions in the original lease it was held that it would be a breach of trust to purchase lands, the interest in which might be lost by default of others. *Mulholland* v. *Belfast*, 9 Ir. Ch. Rep. 292.

(*w*) A by-law directing payment of $30 to each councillor, "being $20 for services as councillor, and $10 for services for letting and superintending repairs of roads," is bad. *In re Blaikie and Hamilton*, 25 U. C. Q. B. 469. Over payments may be recovered back by the municipality. *St. Vincent* v. *Grier*, 13 Grant 173. The council is not to be confounded with the corporation. It is the governing body acting on behalf of the corporation for the particular year. It is, moreover, a fluctuating body; the council for one year not being identical with the council for another year, and not to be so looked upon even though it should happen to be composed of the same persons. *Per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 583. The members of the council are not the corporation, but the agents of the corporation for the affairs and funds of the corporation. When these agents are proved to misappropriate the funds of the corporation, an action will lie against them to recover it back, and when that misappropriation is mixed up with what may have been rightfully paid, it is but right, in order to operate as a safeguard to the corporation, to cast the burthen of proof on the agent, to separate from the appropriation he has received that portion which he would be legally entitled to take. *Per* Burns, J., *Ib.* 588; *Blakie* v. *Staples*, 13 Grant 67. And it would be well for those who take part in the illegal appropriation of public moneys to reflect that there is not only a civil but a criminal remedy. *Per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481. See further, *Baxter* v. *Kerr*, 23 Grant 367. The law attaches the liability of trustees to municipal councillors, *Morrow* v. *Connor*, 11 P. R. 423. The treasurer should not pay money on any or every draft and order which the reeve for the time being may direct him to pay. The township moneys will probably be considered as still in his hands, unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the municipality. *East*

232. The head of the council of any county, city, town or incorporated village may be paid such annual sum or other remuneration as the council of the municipality may determine. (*x*) 46 V. c. 18, s. 230. Remuneration of mayor, etc.

DIVISION II.—CONDUCT OF BUSINESS.

Ordinary meetings to be open to public. *Sec.* 233.
Quorum. *Secs.* 234, 235.
Who to preside. *Secs.* 236, 238-240.
Special meetings. *Secs.* 236-238.
Presiding officers may vote. *Sec.* 241.
Equality of votes negatives question. *Sec.* 241.
Power to adjourn. *Sec.* 242.

233. Every council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct, but the head or other chairman of the council may expel and exclude from any meeting, any person who has Ordinary meetings to be open.

Nissouri v. *Horseman* 9 U. C. C. P. 191, *per* Draper, C. J. Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or by-law of a corporation created by Act of Parliament. *Per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481. And if a treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution: *per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580; but not now liable to any action at law for moneys paid by him in accordance with a by-law or resolution of the council. Sec. 250. It was, under the old statutes, held, that under power to remunerate municipal officers, the members of the council had no power to remunerate themselves. See note *a* to sec. 278.

(*x*) The office of mayor is in many cases a very onerous and responsible position, and one which subjects the incumbent to many obvious and unavoidable expenses. See sec. 244. It is only proper, therefore, that some provision should be made for the remuneration of a person holding such a position. Before 1873, there was no power to make such a provision. See note *a* to sec. 278. The power now conferred on the council is to pay "such annual sum or other remuneration" as the council may determine. The grant should not be made in the shape of a gratuity for services rendered in several years previous to the making of it. See *McLean and The Town of Cornwall*, 31 U. C. Q. B. 314. The determination should, it is apprehended, be made by by-law, and made to take effect only for the future. *Ib.* The section was, by 40 Vict. ch. 7, Sch. A., 272, extended to the head of any county council.

been guilty of improper conduct at such meeting. (*a*) 46 V. c. 18, s. 231.

Quorum.

234. A majority of the whole number of members required by law to constitute the council shall be necessary to form a quorum. (*b*) 46 V. c. 18, s. 232.

In councils of five, three must concur

235. When a council consists of only five members, the concurrent vote of at least three shall be necessary to carry any resolution or other measure. (*c*) 46 V. c. 18, s. 233.

The heads of councils to preside.

Special meetings.

236.—(1) The head of every council shall preside at the meetings of council, (*d*) and may at any time summon a special meeting thereof, and it shall be his duty to summon a special meeting whenever requested in writing by a majority of the members of the council. (*e*) 46 V. c. 18, s. 234.

(*a*) It is one of the essential qualities of a Court of Justice, that its proceedings be public, and all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose, provided they do not interrupt the proceedings, and provided there be no other kind of improper conduct, have a right to be present and hear what is going on. *Per* Bayley, J., in *Dubney* v. *Cooper*, 10 B. & C. 240. This rule is to its fullest extent to be applied to ordinary meetings of every municipal council.

(*b*) See note *n* to sec. 225.

(*c*) Where there were four councillors present at the passing of a by-law, the reeve put the motion, two of the council declared themselves in favour of it, and the third made no objection, the Court refused to quash the by-law. *In re Mallough and Ashfield*, 6 U. C. C. P. 158. Where four out of the five members of a village council were shareholders in a trading company to which the municipality granted a bonus, the by-law was set aside. *In re Baird and Almonte* 41 U. C. Q. B. 415. See also *Re Vashon and Corporation of East Hawskebury*, 30 U. C. C. P. 194; *Hewison* v. *Pembroke*, 6 O. R. 170, 177.

(*d*) It is not only the right but the duty of the head of the council to preside at its meetings. In the event of the right being denied, legal proceedings may be instituted to enforce it. See *Rex* v. *Williams*, 1 Burr. 402; *Commonwealth* v. *Arrison*, 15 Serg. & Rawle (Pa.) 130. But the question cannot in general be determined as a collateral inquiry in an existing suit. See Dillon on municipal corporations, 3rd Ed., s. 272. If the head of the council refuse to put a motion which it is his duty to put, he may be voted out of the chair. *In re Preston and The Township of Manvers*, 21 U. C. Q. B. 626; or the members may vote on the motion without it being put from the chair. *Brock* v. *Toronto and Nipissing R. W. Co.*, 17 Grant. 425.

(*e*) It is in his discretion at any time to summon a special meeting; but when requested in writing to do so by a majority of the members of the council, it is obligatory upon him to do as requested.

(2) In the absence or death of the mayor or head of the council, a special meeting may be summoned at any time by the clerk upon a special requisition to him, signed by a majority of the members of the council. 47 V. c. 32, s. 6. Summoning of special meetings in absence of the Mayor, etc.

237. In case there is no by-law of a council fixing the place of meeting, any special meeting of the council shall be held at the place where the then last meeting of the council was held, (*f*) and a special meeting may be open or closed as in the opinion of the council, expressed by resolution in writing, the public interest requires. (*g*) 46 V. c. 18, s. 235. Special meetings, where to be held. May be either open or closed.

238. In case of the death or absence of the head of a town council, the reeve, and in case of the absence or death of both of them, the deputy-reeve, and in case of the death or absence of the head of a village or township council, the deputy-reeve shall preside at the meetings of the council, and may at any time summon a special meeting thereof; but if there be more than one deputy-reeve, the council shall determine which of them shall preside at their meeting. (*h*) 46 V. c. 18, s. 236. When reeve or deputy reeve to preside.

239. In the absence of the head of the council, and in the case of a town, village or township, in the absence also of the reeve, if there be one, and also of the deputy-reeve or deputy-reeves, if there be one or more, by leave of the council, or from illness, the council may, from among the members thereof, appoint a presiding officer, who, during Absence of head, etc., provided for

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All the members entitled to be present at a special meeting should be notified to attend, and, if practicable, notified also of the purpose for which the meeting is called. *Smyth* v. *Darley*, 2 H. L. Cas. 789; see also *Ex parte Rogers*, 7 Cow. 526; *People* v. *Batchelor*, 22 N. Y. 128; *Downing* v. *Rugar*, 21 Wend. (N. Y.) 178. The omission to notify a member entitled to be present may be held to invalidate all proceedings at such meeting, *Ib.*, and where the purpose is specified in the notice, there is in general no power to transact business beside such purpose. *Rex* v. *Liverpool*, 2 Burr. 735; *Rex* v. *Carlisle*, 1 Str. 385; *Machell* v. *Nevinson*, 2 Ld. Rayd. 1355; *Bergen* v. *Clarkson*, 1 Halst. (N. J.) 352; see further, note *j* to sec. 223.

(*f*) See note *t* to s. 229.

(*g*) Ordinary meetings of the council are to be open to the public, sec. 233, but power is given to the council under this section to have their *special* meetings in private when in the opinion of the council expressed by resolution in writing the public interest requires it.

(*h*) See note *d* to s. 236.

such absence, shall have all the powers of the head of the council. (*i*) 46 V. c. 18, s. 237.

Casual absence provided for.

240. If the person who ought to preside at any meeting (*j*) does not attend within fifteen minutes after the hour appointed, the members present may appoint a chairman from amongst themselves, and such chairman shall have the same authority in presiding at the meeting as the absent person would have had if present. (*k*) 46 V. c. 18, s. 238.

Head may vote.

Question negatived in cases of equality of votes.

241. The head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members on all questions, (*l*) and any question on which there is an equality of votes shall be deemed to be negatived. (*m*) 46 V. c. 18, s. 239.

Adjournment.

242. Every council may adjourn its meetings from time to time. (*o*) 46 V. c. 18, s. 240.

(*i*) If any of the officers mentioned in the preceding section happen to be present at a meeting, each such officer is, according to the order mentioned, entitled to preside and bound to do so. But if none of the officers named be present, a presiding officer may be elected from among the members to act during the absence of the officer named. The section contemplates absence by leave or illness. In such case a *presiding officer* (commonly called the president of the council) is appointed. The next section contemplates absence from only one meeting when a *chairman* for that meeting or until the arrival of the proper presiding officer is to be appointed.

(*j*) This may mean the head of the council, or, in his absence, one of the officers named in secs. 238, 239. See preceding note.

(*k*) This part of the section is silent as to the duration of the authority. But it is apprehended that the authority would cease on the presence of the officer "who ought to preside."

(*l*) The general import of the words used deserves attention. Apparently no question can come before the council or meeting, on which the presiding officer or chairman is disentitled to vote. There is no exception of any kind in the enactment. The right to vote is given "on *all* questions." Its exercise on any particular question, perhaps affecting the conduct of the presiding officer or chairman himself, is left entirely in his own discretion.

(*m*) An exception to this rule, recognized in the Act, is that which allows a casting vote in the election of the head of a county council. See sec. 227. Another is where united counties make provision for improvements in one of the counties separately. Sec. 516.

(*o*) Adjourned meetings are generally held for the purpose of completing the unfinished business of a preceding meeting. It is allowable, therefore, in the case of an ordinary adjournment, to transact any business that might have been lawfully transacted at the

PART V.

OFFICERS OF MUNICIPAL CORPORATIONS.

Div. I.—The Head.
Div. II.—The Clerk.
Div. III.—The Treasurer.
Div. IV.—Assessors and Collectors.
Div. V.—Auditors and Audit.
Div. VI.—Valuators.
Div. VII.—Duties of Officers respecting Oaths and Declarations.
Div. VIII—Salaries, Tenure of Office and Security.

Division I.—The Head.

Who to be. *Sec.* 243.
Duties. *Sec.* 244.

Who to be head of council.

243. The head of every county and provisional corporation shall be the warden thereof, and of every city and town the mayor thereof, and of every township and incorporated village the reeve thereof. (*r*) 46 V. c. 18, s. 241.

Duties of head of council.

244. The head of the council shall be chief executive officer of the corporation; (*s*) and it shall be his duty to be

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preceding meeting, but which was not transacted for want of time or opportunity to do so. See *Rex* v. *Harris*, 1 B. & Ad. 936; *Scadding* v. *Lorant*, 3 H. L. Cas. 418; *Smith* v. *Law*, 21 N. Y. 296; *People ex rel. Loew* v. *Batchelor*, 22 N. Y. 128; *People* v. *Martin*, 1 Seld. (N. Y.) 22.

(*r*) It is said that at common law corporations have power to appoint such officers as the nature of their constitution requires. *Vintner's Co.* v. *Passey*, 1 Burr. 237; *Hasting's Case*, 1 Mod. 23; *Rex* v. *Barnard*, Comb. 416. But by this Act provision is made for the appointment of the principal officers of a municipal corporation, and so the implied power, if it exist at all, should be sparingly exercised. See *Hoboken* v. *Harrison*, 1 Vroom. (N.J.) 73; *White* v. *Tallman*, 2 Dutch. (N. J.) 67; see also *People* v. *Bedell*, 2 Hill (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233. There are obvious differences between such officers as are enumerated in this section and subordinate officers. See *In re McLean* v. *Cornwall*, 31 U. C. Q. B. 314. But municipal councils may appoint such officers as are necessary for the affairs of the corporation, or for carrying into effect the provisions of any Act of the Legislature or by-law of the corporation. Sec. 479.

(*s*) Experience has demonstrated the necessity of more power and more responsibility in the executive head of our municipal institutions. Too often the duties of the mayor or the chief executive officer are only nominal, and to these he gives but little attention—

vigilant and active at all times in causing the law for the government of the municipality to be duly executed and put in force; to inspect the conduct of all subordinate officers in the government thereof, and, as far as may be in his power, to cause all negligence, carelessness and positive violation of duty, to be duly prosecuted and punished, and to communicate from time to time to the council all such information, and recommend such measures within the powers of the council as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality. (*t*) 46 V. c. 18, s. 242.

DIVISION II.—THE CLERK.

Appointment and duties of. *Sec.* 245.
Absence of. *Sec.* 246.

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a natural result of his want of importance and of his inability to control the administration of municipal affairs. If the office be clothed with dignity and real authority; if the mayor shall be invested with the veto power; if he shall have the sole right to appoint and the unrestricted power to suspend or remove subordinate officials or heads of departments;—then the citizens can justly demand of him that he shall be individually responsible for the proper conduct of the concerns of the municipality, and if grievances exist they will know to whom to apply for remedy, and on whom to fix the blame. Dillon's Municipal Corporations, 3d. ed. sec. 13. Mayors of our cities and towns have responsibility without power, and one result is a lax administration of affairs, too often combining inefficiency with extravagance and waste.

(*t*) Much of the happiness of the inhabitants of a city or town depends upon the prudent management of the finances, the preservation of health, the proper repair of roads, and the ornamentation of the municipality. The inhabitants of all municipalities have, more or less, these wants in common. By-laws to secure these objects are generally passed but seldom enforced; the consequence is, the reverse of all that is desirable in municipal government. It is by this section made the duty of heads of councils to be vigilant and *active* in the performance of just such duties as above suggested.

Other duties, not necessary to be here particularized, are sometimes cast upon heads of corporations. See Dillon on Municipal Corporations, 3rd ed., sec. 209.

By this Act the head of the council of a city, town or incorporated village may be paid such annual or other remuneration as the council may determine. See sec. 232. The mayor of a city or town is *ex officio* a Justice of the Peace: sec. 415, and, where there is no Police Magistrate, has jurisdiction to hear and determine prosecutions for offences against by-laws: sec. 416, and, under particular circumstances, is authorized to call out the *posse comitatus* to enforce the law within the municipality, should exigencies require it. Sec. 478.

Records and papers may be inspected. Sec. 247.
Return of statistics. Sec. 248.

Appointment of clerk, and his duties.

245. Every council shall appoint a clerk ; (*a*) and the clerk shall truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the council, and shall preserve and file all accounts acted upon by the council, and also the originals or certified copies of all by-laws, and of all minutes of the proceedings of the council, all of which he shall so keep in his office, or in the place appointed by by-law of the council. (*b*) 46 V. c. 18, s. 243.

Provision for absence, &c., of clerk.

246. The council may by resolution provide that, in case

(*a*) It is made the duty of the council to appoint a clerk. Convenience, if not duty, however, will at all times render one necessary. *Beverley* v. *Barlow*, 7 U. C. L. J. 117 Quære, are the offices of clerk and treasurer so incompatible as to make it illegal for the same person to hold both offices. See note *k* to sec. 179. In the Eng. Stat. 3 & 4 Will. IV. cap. 101, s. 18, there is an express prohibition against appointing the same person to both offices. See *Hawkings* v. *Newman*, 4 M. & W, 613.

(*b*) There are many other duties besides those mentioned in this section imposed upon the clerk by this Act. The clerk while in office, can only charge the council by acts within the scope of his general authority, or by such as the council beforehand directed or afterwards sanctioned. *Ramsay* v. *Western District Council*, 4 U. C. Q. B. 374. He may amend an erroneous record. *Scammond* v. *Scammond*, 8 Fost. (N. H.) 429; *Cass* v. *Bellows*, 11 Fost. (N. H.) 501 ; *Harris* v. *School District*, 8 Fost. (N. H.) 58 ; *Gibson* v. *Bailey*, 9 N. H. 168 ; *Whittier* v. *Varney*, 10 N. H. 291 ; *Welles* v. *Battelle*, 11 Mass. 477 ; *Low* v. *Pettingill*, 12 N. H. 337 ; *Pierce* v. *Richardson*, 37 N. H. 306 ; *President* v. *O'Malley*, 18 Ill. 407 ; *Boston Turnpike Co.* v. *Pomfret*, 20 Conn. 590 ; *Chamberlain* v. *Dover*, 13 Maine, 466. The power to amend ceases when he ceases to hold the office. *School District* v. *Atherton*, 12 Met. (Mass.) 105 ; *Hartwell* v. *Littleton*, 13 Pick. (Mass.) 229. His successors cannot make an amendment. *Taylor* v. *Henry*, 2 Pick. (Mass.) 397 ; *State* v. *Williams*, 25 Maine, 561, 565 ; *Fossett* v. *Bearce*, 29 Maine, 523. But in a proper case the council might direct the amendment to be made. *Hutchinson* v. *Pratt*, 11 Vt. 402. Where an amendment is made, and it should not be attempted unless absolutely necessary, it should be made with the sanction of some superior officer or of the council, and in such a manner as to be easily distinguished from the original text. See *Pierce* v. *Richardson*, 37 N. H. 306. Where the applicant for the office of township clerk shewed that he was unable to write, his application for a writ of mandamus failed. *Reg.* v. *Ryan*, 6 U. C. Q. B. 296.

the clerk is absent or incapable through illness of performing his duties of clerk, some other person to be named in the resolution, or to be appointed under the hand and seal of such clerk, shall act in his stead, and the person so appointed shall, while he so acts, have all the powers of the clerk. (*c*) 46 V. c. 18, s. 244.

Minutes, etc., to be open to inspection.

247. Any person may inspect any of the particulars aforesaid, (*d*) as well as the assessment rolls, voters' lists, poll books, and other documents in the possession of or under the control of the clerk, at all seasonable times, (*e*) and the clerk shall, within a reasonable time, furnish copies thereof to any applicant at the rate of ten cents per hundred words, or at such lower rates as the council appoints, and shall, on payment of the proper fee therefor, furnish within a reasonable time, to any elector of the municipality, or to any other person interested in any by-law, order or resolution, or to his solicitor, a copy of such by-law, order or resolution, certified under his hand and under the corporate seal. (*f*) 46 V. c. 18, s. 245.

Copies to be furnished and charges therefor, etc.

Returns to be made to Bureau of Industries.

248.—(1) The clerk of every municipality shall in each year, within one week after the final revision of the assessment roll, (*g*) under a penalty of $20 in case of default,

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(*c*) The council has an implied power, in case of the temporary absence of the clerk, to appoint a person to discharge his duties. See *Rex* v. *Mothersell*, 1 Str. 93; *Hutchinson* v. *Pratt*, 11 Vt. 402.

(*d*) See note *b* to sec. 245.

(*e*) It is the right of any inhabitant of the municipality to inspect the records, books and other documents of the corporation on proper occasions: *Rex* v. *Shelley*, 3 T. R. 142; *Rex* v. *Babb*, *Ib.*, 579; *Harrison* v. *Williams*, 3 B. & C. 162; *Rogers* v. *Jones*, 5 D. & R. 484. And it is a right which may be enforced by mandamus. *Rex* v. *Newcastle*, 2 Str. 1223; *Rex* v. *Lucas*, 10 East 235; *Rex* v. *Purnell*, 1 Wils. 242; *Rex* v. *Bridgeman*, 2 Str. 1203; *People* v. *Cornell*, 47 Barb. (N. Y.) 329.

(*f*) No provision is made for the funding of these fees by the clerk; and there is no declaration making the fees his own. In the absence of some by-law or resolution authorizing him to keep them, it would, it is presumed, be his duty to pay them over to the corporation. See *Reg.* v. *Cumberlege*, 36 L. T. N. S. 700.

(*g*) The duty of the clerk is to make the return required under the penalty named. The machinery of municipal government assumes that certain things are done by certain days in the municipal year, so that other things may in their order follow. Municipal officers cannot, therefore, regard provisions as to time with too much strictness. But if the thing required to be done within the time limited be

make a return to the secretary of the Bureau of Industries, Toronto, on schedules or forms furnished by the said secretary, and approved by the Lieutenant-Governor in Council, of such statistics or information as the assessment roll or other records of his office afford, and as such schedules or forms call for.

Tabulated statement of returns to be made by secretary of Bureau.

(2) The secretary of the Bureau of Industries shall, as soon as may be, after the opening of every Session of the Legislature, report to the Minister of Agriculture for the purpose of being laid before the Legislative Assembly, a tabulated statement of all the returns hereby required to be made.

Moneys payable to municipalities in default to be retained.

(3) The Treasurer of the Province shall retain in his hands any moneys payable to any municipality, if it is certified to him by the secretary of the Bureau of Industries, that the clerk of such municipality has not made the returns hereby required. 50 V. c. 29, ss. 13-15.

DIVISION III.—THE TREASURER.

His appointment, security, duties, &c. *Secs.* 249-252.
Powers of successor, when Treasurer is dismissed or absconds. *Sec.* 253.

Treasurer to be appointed

249. Every municipal council shall appoint a treasurer, (*h*) who may be paid either by salary or by a percentage

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not done, it does not follow that it cannot afterwards be done. It is, no doubt, important that it should be done within the time limited; but "it is still more important that it *should be done;* and therefore if, owing to some uncontrollable circumstances, it is not done on the proper day, it ought to be done on the next or some other." *Per* Pollock, C. B., in *Hunt* v. *Hibbs*, 5 H. & N. 126. So far as the public interests are concerned, the Act may be looked upon as directory. *Rex* v. *Norwich*, 1 B. & Ad. 310 see further, *Cole* v. *Green*, 6 M. & G. 872; *Morgan* v. *Parry*, 17 C. B. 334; *Brumfit* v. *Bremmer*, 9 C. B. N. S. 1; *Nickle* v. *Douglass*, 35 U. C. Q. B. 127; *Reg.* v. *Ingall*, 2 Q. B. D. 199; *Striker* v. *Kelly*, 7 Hill (N.Y.) 9; *Elendorf* v. *New York*, 25 Wend. (N.Y.) 693. But as regards the officers whose duty it is made to do the things within a limited time, the Act may be construed as imperative. *Hunt* v. *Hibbs*, 5 H. & N. 126.

(*h*) The offices of treasurer and member of the council are incompatible. *Reg.* v. *Smith*, 4 U. C. Q. B. 322. The treasurer has no power to bind the corporation by acceptance of orders for School Teachers salaries. *Munson* v. *Collingwood*, 9 U. C. C. P. 497;

To give security

(*i*) and every treasurer, before entering upon the duties of his office, shall give such security as the council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands; (*j*) and it shall be the duty of every council

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Smith v. *Collingwood*, 19 U. C. Q. B. 259. Where a treasurer was re-appointed annually for several years, it was held that the re-appointments were not equivalent to removals and re-appointments but were rather a retention in office of the same treasurer, and that his sureties were not in consequence thereof discharged. *Corporation of Adjala* v. *McElroy*, 9 O. R. 580. As to the liability to account for moneys fraudulently obtained by the treasurer acting in a matter within the scope of his authority and where the corporation has received the benefit of the fraud. See *Molsons Bank* v. *Town of Brockville*, 31 U. C. C. P. 174.

(*i*) A resolution, empowering a person to collect taxes at a given rate per cent. on the amount collected, may be repealed or modified at any time by the corporation, on the sole condition that the corporation shall continue liable for any compensation earned under the resolution previous to its repeal or modification. *Hestand* v. *New Orleans*, 14 La. An. 330. The personal representatives of a deceased treasurer are liable to be sued in respect of his default. *Lincoln* v. *Thompson* 8 U. C. Q. B. 615.

(*j*) Accounting for moneys includes payment over. *Malling* v. *Chalkin*, 3 M. & S. 502. Where the treasurer had in his hands a large balance belonging to the township at the time of giving his bond with new sureties, it was held that subsequent payments by the treasurer were applicable first to the discharge of that balance. *East Zorra* v. *Douglas*, 17 Grant 462. See further, *Leonard* v. *Black*, 4 U. C. L. J. 260; *Peers* v. *Oxford*, 17 Grant 472; *Corporation of Adjala* v. *M'Elroy*, 9 O. R. 580. Where a bond, instead of using the words in the statute, limited the responsibility to moneys coming into the treasurer's hands, applicable to the general uses of the municipality, it was held that Clergy Reserve moneys and money derived from the distribution of the Provincial surplus which had by by-law been specifically appropriated to educational purposes, were not within the condition of the bond, and that the operation of the bond was not extended by R. S. O. 1877 c. 180, s. 213 and c. 204, s. 221. *Oakland* v. *Proper*, 1 O. R. 330.

It is no objection to the bond that it was executed before the appointment to office was made. *Essex* v. *Strong*, 21 U. C. Q. B. 149. If the condition of the bond of a public officer substantially comply with the requirements of the Statute, Courts will endeavour to sustain the bond as against technical defences. *Baby* v. *Baby*, 8 U. C. Q. B. 76. See *People* v. *Holmes*, 2 Wend. (N.Y.) 281, *Ib.* 615; *Alleghany County* v. *Van Campen*, 3 Wend. (N.Y.) 49; *Lawton* v. *Erwin*, 9 Wend. (N.Y.) 233; *Postmaster-General* v. *Rice*, Gilpin (Pa.) 554; *Montville* v. *Haughton*, 7 Conn. 543; *Commonwealth* v. *Wolbert*, 6 Binn. (Pa.) 292; *Thomas* v. *White*, 12 Mass. 369; *Kavanaugh* v. *Sanders*, 8 Greenl. (Me.) 442; *Horn* v. *Whittier*, 6 N. H. 88; *Supervisors* v. *Coffinbury*, 1 Mich. 359. The invalidity of the

in each and every year to enquire into the sufficiency of the security given by such treasurer, and report thereon. (*k*) 46 V. c. 18, s. 252.

Annual inquiry as to sufficiency of.

250—(1) Every treasurer shall receive and safely keep all moneys belonging to the corporation, and shall pay out the same to such persons and in such manner as the laws of the Province and the lawful by-laws or resolutions of the council of the municipal corporation, whose officer he is, direct ; (*l*) but no member of the council shall receive any

To receive and take care of and disburse moneys, etc.

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appointment cannot be set up as a defence to an action on a bond where moneys have been collected. *Hoboken* v. *Harrison*, 1 Vroom. (N.J.) 73 ; *Seiple* v. *Elizabeth*, 3 Dutch (N.J.) 407 ; nor can irregularities in the mode of appointment. *Whitby* v. *Harrison*, 18 U. C. Q. B. 603 ; *Whitby* v. *Flint*, 9 U. C. C. P. 449 ; *Todd* v. *Perry*, 20 U. C. Q. B. 649. The imposition of additional taxes to those assessed at the time of taking the security and the increase of risk thereby, has been held not to violate a bond given for the general performance of duties and payment of moneys. *Beverley* v. *Barlow*, 10 U. C. C. P. 178. Nor is it a defence that the money received by the treasurer was not demanded by the Government, which was entitled thereto. *Essex* v. *Park*, 11 U. C. C. P. 473. It has been held that sureties for an officer whose term is limited to a year, are not liable beyond the year, though the officer continue by law till his successor is appointed. *Reg. ex rel. Ford* v. *McRae*, 5 P. R. 369 ; *Dover* v. *Twombly*, 42 N. H. 59 ; *Clemsford Co.* v. *Demorest*, 7 Gray (Mass.) 1.

(*k*) This is a most important duty, but, it is believed, one of the most neglected of all duties imposed on councils. It may be that if the municipality lose the benefit of their security by reason of a neglect to perform this duty on the part of the members of the council, the latter could be made liable to make good the loss. One of the sureties of a treasurer being desirous of being relieved from his suretyship, the treasurer offered to the council a new surety in his place. The council thereupon passed a resolution approving of the new surety, and declaring that on the completion of the necessary bonds the withdrawing surety should be relieved. No further act on the part of the council took place. But the treasurer and his new surety (omitting the second surety) joined in a bond conditioned for the due performance of the treasurer's duties for the future, and the treasurer executed a mortgage to the same effect. The clerk, on receiving these, gave up to the treasurer the old bond and the treasurer destroyed it. Eight years afterwards a false charge was discovered in the accounts of the treasurer of a date prior to these transactions, and it was held that the sureties on the first bond were responsible for it. *Frontenac* v. *Breden*, 17 Grant. 645.

(*l*) In an action by a municipal corporation against their treasurer on his bond, it appeared that the corporation had a contract with one E. to build bridges for them. E. got the reeve to endorse his note for $600, which was discounted by defendant at a bank, of

money from such treasurer for any work performed or to be

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which he was agent, as well as treasurer of the municipality. A few days afterwards another note for $400, made by E. and endorsed by other persons—one a member of the corporation—was discounted at the same bank. When these notes were about to fall due, a meeting of the council took place, at which defendant was present, and the reeve swore that it was then understood that the council should assume these two notes, and he thought the defendant was authorized to charge them both to the corporation; but other councillors examined did not agree with the reeve in their recollection of what took place; and the only resolution or minute in writing was, that the council should give their note for $700, to be used in the bank by the defendant. This note was accordingly made by the reeve, and endorsed by the other members. *Held*, that under these facts the treasurer had no right to charge the council with the remaining $300. *Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278. In an account rendered by defendant to the council, this $1,000 was charged as paid to E., and it was asserted the council made subsequent payments to him, assuming the account to be correct. But, *held*, that assuming this to be the case, of which there was some question, the council, by omitting to notice or object to this item, were not bound to pay it. *Ib.* If the treasurer chooses to act upon the construction which he puts upon or the inferences which he draws from mere conversations among members of the council which may take place in his presence, he does so at his own risk. *Ib.* 285, *per* Robinson, C. J. The treasurer should not pay money on any or every draft and order which the reeve for the time being may direct him to pay. The township moneys will probably be considered as still in his hands unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the municipality. *East Nissouri* v. *Horseman*, 9 U. C. C. P. 191, *per* Draper, C. J. Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or by-law of a corporation, *Per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481; and if a treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution, *per* Robinson, C. J., in *East Nissouri* v *Horseman*, 16 U. C. Q. B. 580. Where the treasurer of a municipality kept his money in his house, there being no proper place for depositing the same provided by the municipality, and no bank in the county within 35 miles, it was held that he was not liable to make good the amount of loss sustained by the accidental burning of his house and the destruction therein of moneys of the municipality. *Corporation of Houghton* v. *Freeland*, 26 Grant. 500.

But where persons entrusted with the administration of a fund have incurred legitimate and proper expenses thrown upon them by their fiduciary situation they have a right to reimburse themselves out of the funds. See *Rex* v. *Inhabitants of Essex*, 4 T. R. 591; *Rex* v. *Commissioners of Sewers for the Tower Hamlets*, 1 B. & Ad. 232; *Attorney-General* v. *Mayor of Norwich*, 2 M. & C. 406; *Reg.* v. *Mayor, &c., of Sheffield*, L. R. 6 Q. B. 652; *Reg.* v. *White*, 14 Q. B. D. 358. An attempted appropriation contrary to the terms of the trust

performed ; (*m*) and the treasurer shall not be liable to an action for any moneys paid by him in accordance with any by-law or resolution passed by the council of the municipality of which he is the treasurer, unless where another disposition is expressly made of such moneys by statute. (*n*) His liability limited.

(2) In case of the death of a county treasurer the warden for the time being may, by warrant under his hand and seal, appoint a treasurer *pro tempore* for such special purpose or purposes as the warden may deem necessary, who shall hold office until the next meeting of the council, and all acts performed by him, authorized by said warrant, shall be as valid and binding as if performed by a treasurer regularly appointed : Provided always that the warden shall, in and by such warrant of appointment, direct what security shall be given by such treasurer *pro tempore* for the faithful performance of his duties, and especially for duly accounting for, and paying over, all moneys which may come into his hands, and he shall, before entering upon his duties, give such security, but he shall not interfere with the books, vouchers, or accounts of the deceased treasurer until a proper audit shall be made. 46 V. c. 18, s. 253. Appointment of treasurer, *pro tem.* Proviso.

251 Every treasurer shall also prepare and submit to the council half-yearly a correct statement of the moneys at the Half-yearly statement of assets.

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may be restrained. *Attorney-General* v. *Aspinall*, 2 M. & C. 613. A by-law declaring that the officers of the corporation shall be indemnified for all lawful acts done in an official capacity is not illegal. *Irwin* v. *Mariposa*, 22 U. C. C. P. 367.

(*m*) It is against the policy of the law that a member of a council, who is a trustee for the people, should have any contracts with the corporation, and so be in a position to make a profit out of his trust. See note *p* to sec. 77.

(*n*) The first part of the section makes it the duty of the treasurer to pay out money in such manner as the laws of the Province and the *lawful* by-laws or resolutions of the council direct. But in order to relieve the treasurer from the responsibility of deciding what by-laws or resolutions are or are not legal, it is provided that he shall not be liable to an action for "*any* moneys paid by him in accordance with *any* by-law or resolution passed by the council of the municipality." In other words, the by-law or resolution, whether legal or illegal, if requiring him to pay the money, is a protection to him. This part of the section is, it is believed, designed to relieve treasurers from the embarrassment indicated, and if not so read will contradict the first part of the section.

credit of the corporation (*o*) whose officer he is; and in cities, towns, incorporated villages and townships which have passed by-laws requiring this to be done, the treasurer shall, on or before the 20th day of December in each year, prepare and transmit to the clerk of the municipality a list of all persons who have not paid their municipal taxes on or before the 14th day of said month of December. (*p*) 46 V. c. 18, s. 254. See Secs. 82, 489 (2).

Annual list of persons in default for taxes.

Returns to be made to bureau of industries.

252—(1) The treasurer of every municipality shall, on or before the first day of May in each year, under a penalty of $20 in case of default, furnish to the secretary of the Bureau of Industries, Toronto, on schedules or forms furnished by said secretary and approved by the Lieutenant-Governor in Council, such information or statistics regarding the finances or accounts of the municipality, as such schedules or forms call for.

(*o*) The moneys of the municipality should be by the treasurer deposited and kept to "the credit of the corporation," and not to his own credit. They should be kept in a separate account and not be mixed up with the treasurer's private money. *Peers* v. *Oxford*, 17 Grant. 472. Most of the losses which municipalities have sustained have arisen through the misconduct of their treasurers, being tempted to use and using the money of the corporation for purposes of speculation or otherwise as their own. The only safe course for a treasurer to adopt is to keep strict account of the moneys entrusted to his charge, and on no account whatever to touch it, except for corporation purposes. A county treasurer, had through a misapprehension of what was the proper course, been allowed to mix all county money with his own, and had used for his private purposes a large sum of money received in that way. In this state of things he had occasion to give the corporation a new bond, with two new sureties. Shortly afterwards it was ascertained that he was not able to pay his balance to the corporation. The sureties filed a bill to be relieved from their bond, on the ground of the treasurer's misconduct, and of the uncommunicated knowledge of that misconduct by the representatives of the corporation at the time the bond was given; but the court being of opinion that most of the facts relied on as proving misconduct were known to the sureties, and that no information had been withheld from them fraudulently, held the bond to be valid *Ib.* See *Gananoque* v. *Stunden*, 1 O. R. 1; *Corporation of Adjala* v. *McElroy*, 9 O. R. 580. A surety cannot get rid of liability on the ground of having become surety in ignorance of material facts, unless he can shew the information was *fraudulently* withheld from him. *East Zorra* v. *Douglass*, 17 Grant 462. So the fact that the council tacitly permits the treasurer to mix the money of the municipality with his own is not of itself any defence to the sureties. *Ib.* See also *Rawdon* v. *Ward*, 27 U. C. Q. B. 609.

(*p*) The effect of this return is to deprive the persons in arrear for taxes of the right to vote. See sec. 81.

(2) The secretary of the Bureau of Industries, shall, as soon as may be, after the opening of every Session of the Legislature, report to the Minister of Agriculture for the purpose of being laid before the Legislative Assembly, a tabulated statement of all the returns hereby required to be made. Tabulated statement of returns to be made by secretary of bureau.

(3) The Treasurer of the Province shall retain in his hands any moneys payable to any municipality, if it is certified to him by the secretary of the Bureau of Industries, that the treasurer of such municipality has not made the returns hereby required. 50 V. c. 29, ss. 12, 14, 15. Moneys payable to municipalities in default to be retained.

253. In case any treasurer is dismissed from office, or absconds, it shall be lawful for his successor to draw any moneys belonging to the municipality. (*q*) 46 V. c. 18, s. 255. Provision on dismissal from office.

Division IV.—Assessors and Collectors.

(*See also Rev. Stat. cap.* 193, *ss.* 12, 13.)

Appointment of. *Secs.* 254, 255.
Assessment Commissioner—Board of Assessors. *Sec.* 255.
Township Collectors to act for Provisional Corporations—Disposal of Moneys. *Secs.* 256, 257.

254—(1) The council of every city, town, township and incorporated village shall, as soon as may be convenient after the annual election, appoint as many assessors and collectors for the municipality as the assessment laws from time to time authorize or require, (*r*) and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; (*s*) but the council shall Assessors and collectors, appointment and qualification of.

(*q*) The withdrawal of moneys after dismissal is not to affect the right of the municipality against the sureties of the dismissed treasurer. But it is recommended that so soon as the dismissal takes place, the sureties be informed of the fact, and be thereby placed in a position, and as far as possible without detriment to the municipality, to protect themselves.

(*r*) An assessment is not invalidated by reason of the want of qualification of the person appointed and acting as assessor. *Waterloo Bridge Co.* v. *Cull*, 1 E. & E. 213.

(*s*) As to tenure of office, see sec. 279. The council, by resolution, appointed B. assessor, who was sworn into office, and made the assessment. This appointment was made by a vote of three against

not appoint as assessor or collector a member of the council (*t*).

(2) The same person may, in a city, town or township, be appointed assessor or collector for more than one ward or polling sub-division.

(3) In municipalities which have passed by-laws requiring taxes to be paid on or before the 14th day of December, (*u*) it shall be the duty of the collectors, on the 15th day of December in each year, upon oath, to return to the treasurer the names of all persons who have not paid their municipal taxes on or before the 14th day of the said month of December. (*v*) 46 V. c. 18, s. 256.

In cities, assessment commisioner may be appointed instead of such assessors, &c.

255. In cities, the council, instead of appointing assessors under the preceding section, may appoint an assessment commissioner, who, in conjunction with the mayor for the time being, shall, from time to time, appoint such assessors and valuators as may be necessary, and such commissioner, assessors and valuators shall constitute a board of assessors, and shall possess all the powers and perform the duties of assessors appointed under the last preceding section; (*w*) and the council shall also have power by by-law to determine the number of collectors to be appointed, and prescribe their duties, and any commissioner, assessor or collector to be ap-

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two. The election of one of the three councillors was afterwards set aside, and by a subsequent vote the resolution was rescinded, and a by-law passed appointing a different person assessor. Both made assessments, and in consequence much confusion arose. The Court, under these circumstances, granted a *quo warranto* to determine the validity of the last appointment. *In re McPherson and Beeman*, 17 U. C. Q. B. 99.

(*t*) The offices are incompatible. See note *k* to sec. 179.

(*u*) See note *q* to sec. 81.

(*v*) See sec. 251.

(*w*) This provision for the appointment of a board of assessors is restricted in its operation to cities. The object of the provision is to secure, as much as possible, efficiency, economy and uniformity of assessment. Different men have different ideas as to value. It has been found that when assessors in the different wards of a city act independently of each other, property in some wards is assessed higher than in others. For remedy provision is made for the constitution of a board of assessors. The board is made to consist of an assessment commissioner, assessors and valuators. The commissioner is appointed by the council, and the assessors and valuators by the commissioner, acting in conjunction with the

pointed by any city need not be appointed annually, but shall hold office at the pleasure of the council; (*x*) and all notices, in other municipalities required to be given to the clerk of the municipality in matters relative to assessment, shall in such city be given to the assessment commissioner. (*y*) 46 V. c. 18, s. 257, *part.*

Tenure of office of commissioner, assessors, &c.

256. The collectors of the several townships in a junior county of a union of counties shall *ex officio* be collectors in such townships for the provisional council, and the collectors shall pay over to the provisional treasurer the money they collect under any by-law of the provisional council. (*z*) 46 V. c. 18, s. 258.

Collector of provisional council.

Payments.

257. The money so collected shall be deemed the money of the union, so far as necessary to make the collectors and their sureties responsible to the union therefor; and in case the corporation of the union receives the same, such corporation shall immediately pay the amount to the provisional treasurer, retaining the expenses of collection. (*zz*) 46 V. c. 18, s. 259.

Moneys, how to be disposed of.

DIVISION V.—AUDITORS AND AUDIT.

Appointment and duties. *Secs.* 258-264.
Publication of abstract and statement of receipts and expenditure. *Sec.* 265.

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mayor. There is no limit to the number of assessors and valuators. As many "as may be necessary" may be appointed; and the appointments may be made "from time to time." The commissioner, assessors and valuators, like other officers of the corporation, hold office during pleasure. It is not necessary, therefore, that they should, be appointed or elected annually.

(*x*) See sec. 279 and notes thereto.

(*y*) The office of assessment commissioner is one of considerable importance. Taxes should be as small as possible, as uniform as possible and collected at as little expense as possible. It is believed by those who favour such an office that there will be more efficiency, more economy, and more uniformity than under the old system.

(*z*) The powers of a provisional council are not in any way intended to interfere with the powers of the council of the union. Sec. 42. Any money raised by the provisional council in the junior county is independent of any money raised therein by the council of the union. *Ib.*

(*zz*) The corporation of the union is as it were, a trustee of the money for the corporation of the provisional council. But as

Council to finally audit. Sec. 266.
County council to regulate and audit County moneys. Sec. 267.
Audit, how often to be made. Sec. 268.
Special provisions relating to Toronto. Sec. 259.

Auditors.

258. Subject to the provisions of the next two sections as to cities, every council shall at the first meeting thereof in every year after being duly organized, (*a*) appoint two auditors, one of whom shall be such person as the head of the council nominates; (*b*) but no one who, at such time, or during the preceding year, is or was a member, or is or was clerk or treasurer of the council, (*c*) or who has, or during the preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the corporation (*d*) except as auditor, (*e*) shall be appointed an auditor. And in the event of an auditor so appointed to audit the accounts of the county refusing, or being unable to act, then the head of the council shall nominate another person to act in his stead. 46 V. c. 18, s. 260; 50 V. c. 29, s. 10.

Disqualification for office of.

Appointment of auditors by the city of Toronto.

259.—(1) The council of the corporation of the city of Toronto shall, during the month of December in each year, appoint two auditors. (*f*) 46 V. c. 18, s. 268 (1).

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between the former and its officers, it is no defence to the latter that the corporation of the union is not beneficially interested in the money. A demand of some kind ought to be made for the money before bringing an action for its recovery. *Caledon* v. *Caledon*, 12 U. C. C. P. 301.

(*a*) See note *p* to sec. 225.

(*b*) The council is to appoint two auditors annually, but one of them is to be a person nominated by the head of the council. Hence it will be seen that a nomination by the head of the council, though not in terms an appointment, is, under this section, in effect the same.

(*c*) The offices are incompatible. The disqualification extends to the holding of the incompatible office "during the preceding year." See *Reg.* v. *Hiorns*, 7 A. & E. 960.

(*d*) See note *p* to sec. 74.

(*e*) This is to permit the same individual to be reappointed to the office of Auditor. Audits in Cities and Towns may be daily (see sec. 268), and in other Municipalities monthly or quarterly, as directed by By-laws on that behalf. *Ib.*

(*f*) The general power is for the council of a city or town to appoint an auditor. Sec. 268. The exception, as to two auditors in

(2) The auditors for the said city shall discharge the duties imposed upon auditors by sub-section 2 of section 263 of this Act, within one month after the 31st day of December in each year. 46 V. c. 18, s. 270. Annual report by auditors of city of Toronto.

260—(1) The council of any city which shall pass a by-law declaring that it is expedient to appoint its auditors in the month of December in each year, shall, while such by-law remains in force, and in the month of December in each year, instead of at its first meeting after being duly organized, appoint two auditors. 47 V. c. 32, s. 7 (1). Time for appointment of auditors in cities.

(2) Notwithstanding this section, or any such by-law, the provisions of section 258 of this Act, as to the appointment of auditors, shall apply to the audit of the accounts of the year in which such by-law takes effect. 47 V. c. 32, s. 7 (5). Application of existing laws as to appointment of auditors.

261. The auditors appointed under the next preceding two sections shall every month, commencing at the end of the first month in the year following the said month of December, and so on to the end of such year, examine and report upon all accounts affecting the corporation, or relating to any matter under its control, or within its jurisdiction. (*g*) 46 V. c. 18, s. 269; 47 V. c. 32, s. 7 (4). Duty of auditors.

262. The council of a city, in the event of a vacancy in the office of auditor happening by death, resignation or otherwise, may, by by-law, fill such vacancy, and the person so appointed shall hold office for the remainder of the year for which the original appointment was made. 46 V. c. 18, s. 268 (2); 47 V. c. 32, s. 7 (2). Filling vacancies.

263.—(1) The auditors shall examine and report upon all accounts affecting the corporation, or relating to any matter Duties of auditors.

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the case of the City of Toronto, is because of the magnitude and multiplicity of the yearly accounts of that municipality. One of the advantages of having two auditors is, that where they act independently of each other they may check each other's work.

(*g*) The words "under its control or within its jurisdiction" may give rise to some question. Thus, for example, it is the duty of the Council of the City to raise by taxation money required for public education or for police purposes, but the Council has no discretion as to the amount. This being so, it cannot well be said that Public School Board moneys or Police Board moneys are either under the control or within the jurisdiction of the city council. Yet, in the interest of the ratepayers, it would seem only proper that the representative body who raise the money should have some control over its expenditure.

under its control or within its jurisdiction for the year ending on the 31st day of December preceding their appointment. (*h*) 46 V. c. 18, s. 261.

To prepare abstract and detailed statement of receipts and expenditure, etc.

(2) The auditors shall prepare in duplicate an abstract of the receipts, expenditure, assets, and liabilities of the corporation, and also a detailed statement of the same in such form as the council directs. They shall make a report on all accounts audited by them, and a special report of any expenditure made contrary to law. The auditors shall transmit one copy of the abstract to the secretary of the Bureau of industries, Toronto, and shall file the other, together with the detailed statement and reports in the office of the clerk of the council within one month after their appointment; (*i*) and thereafter any inhabitant or ratepayer of the municipality may inspect the same at all reasonable hours, and may by himself or his agent at his own expense take a copy thereof or extracts therefrom. (*j*) 50 V. c. 29, s. 11.

Publication of statements of assets and liabilities.

(3) The council of every town, township and incorporated village shall hold a meeting on the fifteenth day of December in each year, or if such day happen to be a Sunday, then on

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(*h*) Negligence of the Auditors in examining and reporting upon accounts will not, under ordinary circumstances, relieve those indebted to the Corporation from the payment of their liabilities. See *In re Eldon and Ferguson*, 6 U. C. L. J. 207. "It seems to me to be a monstrous proposition, that an officer of the Corporation may wilfully or even negligently omit to enter the receipt of moneys; and because the Auditors have not been able to discover the omission, and the Corporation approves of the report, that when the omissions are discovered the officer may set up the audit to cover his own fraud or neglect." *Ib.* 209, *per* Richards, J. A surety for the due performance of a Treasurer's duties is not relieved from liability by the negligence of the Auditors in proving the Treasurer's accounts. *Frontenac* v. *Breden*, 17 Grant 645. The fact of the Treasurer having become reduced in his circumstances after the auditing and passing of his accounts, and before the discovery of an error in them, is no bar to a suit against the surety. *Ib.*

(*i*) See note *g* to sec. 246.

(*j*) The right to inspect the Auditors' report is extended to "any inhabitant *or* ratepayer." The difference between an inhabitant and a ratepayer is, that "inhabitant" means a resident, whether a ratepayer or not, and that a "ratepayer" is a person who pays taxes, whether a resident or not. See *Rex* v. *North Curry*, 4 B. & C. 961. Mere colourable residence is insufficient to constitute a person an inhabitant. *Rex* v. *Sargent*, 5 T. R. 466; *Rex* v. *Duke of Richmond*, 6 T. R. 560; *Bruce* v. *Bruce*, 2 B. & P. 229, *n*; *Rex* v. *Mitchell*, 10 East, 511; *Whithorn* v. *Thomas*, 7 M. & G. 1.

the Monday following, and shall immediately thereafter publish a detailed statement of receipts and expenditure for the portion of the year ending on the day of such meeting, together with a statement of assets and liabilities and uncollected taxes. The said statement shall be signed by the mayor or reeve and by the treasurer, and shall be published forthwith in one or more newspapers of the municipality (if any) and in such other newspapers circulated in the municipality, as the council may direct.

(*a*) Instead of publishing the said statement in any newspaper, the council may cause the same to be posted up, not later than the twenty-fourth day of December, in the offices of the clerk and of the treasurer, as well as at all the post offices in the municipality, and at not less than twelve other conspicuous places therein.

(4) The clerk shall procure not less than one hundred copies of the said statement and shall deliver or transmit by post to the electors who first request him to do so, one of such copies not later than the twenty-fourth day of December in each year, and shall also see that copies of the said statement are produced at the nomination. (*jj*) 51 V. c. 28, s. 13.

Accounts may be audited before payment.

264. The council of any city may, by by-law, provide that the auditors shall audit all accounts before payment. 46 V. c. 18, s. 268 (3); 47 V. c. 32, s. 7 (2, 3).

Clerks to publish abstracts and statements.

265. The clerk shall publish the auditors' abstract and report (if any), and shall also publish the detailed statement in such form as the council directs, and in case of a minor municipality the clerk shall transmit to the clerk of the county council a copy of such abstract and statement, and the same shall be kept by the clerk of the county council as a record of his office. 46 V. c. 18, s. 263.

The council to audit finally, etc.

266. The council shall, upon the report of the auditors, finally audit and allow the accounts of the treasurer and collectors, and all accounts chargeable against the corporation; and in case of charges not regulated by law, the council shall allow what is reasonable. (*k*) 46 V. c. 18, s. 265.

(*jj*) The provisions of sub-sections 3 and 4 do not apply to the township municipalities situated in the electoral districts of East Algoma, West Algoma, North Renfrew, Muskoka, Parry Sound, or Haliburton. See 51 Vict. c. 28, s. 14.

(*k*) Notwithstanding the use of the word "finally" in this section,

Audit of moneys to be paid by county treasurer.

267. Unless otherwise provided, every county council shall have the regulation and auditing of all moneys to be paid out of the funds in the hands of the county treasurer. (*l*) 46 V. c. 18, s. 266.

Audit of accounts in cities and towns.

In other municipalities.

268. In cities and towns the council may also appoint an auditor, who shall, daily or otherwise as directed by the council, examine and report and audit the accounts of the corporation, in conformity with any regulation or by-law of the council; (*m*) and in other municipalities the auditors shall also, monthly or quarterly, if directed by by-law, examine into and audit the accounts of the corporation. (*n*) 46 V. c. 18, s. 267; 48 V. c. 39, s. 8.

Division VI.—Valuators.

Appointment and duties. Sec. 269.

County council may appoint valuators, their duties, etc.

Equalization of real property.

269. The council of every county may appoint two or more valuators for the purpose of valuing the real property within the county, whose duty it shall be to ascertain, in every fifth year at furthest, the value of the same in the manner directed by the county council; but the valuators shall not exceed the powers possessed by assessor; and the valuation so made shall be made the basis of equalization of the real property by the county council for a period

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it is believed that the corporation may, on the discovery of fraud or mistake, recover moneys due to them on accounts audited, although according to the report of the auditors nothing is due, and notwithstanding the allowance of the accounts upon the basis of the supposed correctness of the audit. See *Reynolds* v. *Ontario*, 30 U. C. C. P. 14.

(*l*) The council is to have the regulation and auditing of all moneys to be paid, &c. The word "regulation" appears to refer to an order prior to payment, the word "auditing" to an act done after payment. The council have, under section 266, a general power to finally audit and allow all the accounts of the treasurer, &c., and all accounts chargeable against the corporation.

(*m*) There was nothing in the old law to prevent a daily audit; but as regards cities and towns, there is now in this section an express declaration that the auditors shall, "daily or otherwise," as directed by the council, examine, report and audit accounts. The person appointed would, it is presumed, be subject to the disqualifications mentioned in section 258.

(*n*) In rural municipalities the accounts are not usually as numerous as in cities and towns. While in the case of the latter the audit

not exceeding five years; and the equalization of personal property shall be as heretofore. (*a*) 46 V. c. 18, s. 271.

DIVISION VII.—DUTIES OF OFFICERS RESPECTING OATHS AND DECLARATIONS.

Declarations of office and qualification. *Secs.* 270-272.
Before whom made. *Sec.* 273.
Certificate of declaration. *Sec.* 273.
Persons to administer oaths and declarations. *Sec.* 274.
Record and deposit of. *Sec.* 275.
Oaths respecting matters before Council. *Sec.* 276.
Penalty for refusing office, or not making or refusing to administer declarations. *Sec.* 277.

Declaration of office by certain officers.

270—(1) Every person elected or appointed under this Act (*b*) to any office requiring a qualification of property in the incumbent (*c*) shall, before he takes the declaration of

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may be "daily or otherwise," in the case of other municipalities it may be "monthly" or "quarterly," as directed by by-law.

(*a*) Before the Act of 1866, a county council arrived at the value of lands situate in the several local municipalities of the county, merely by a process of equalization on an assumed or arbitrary valuation, with the object of producing a just relation between the different local municipalities without reducing the aggregate valuation of the whole county. This was found unsatisfactory, and for remedy section 175 of the Act of 1866 was enacted. The appointment of county valuators is the main feature of the remedy, and is left discretionary with the county councils. The purpose of the appointment is "the valuing the real property" in the county. The duty of the valuators, when appointed, is to ascertain the value "in the manner directed by the county council," but on this stipulation: that they (the valuators) are not to "exceed the powers possessed by assessors." The valuing may be as often or as seldom as the county council see fit, provided it be done in every fifth year at furthest. It is not supposed that a valuation will be necessary every year. But in some localities real property fluctuates in value more than in others, and so, within the limit mentioned, a discretion is vested in the county council. The section has reference only to real property. The equalization of personal property remains as heretofore.

(*b*) "Elected *or* appointed." As to the difference see note *c* to sec. 186.

(*c*) This applies to members of the council.

office, or enters on his duties, (*d*) make and subscribe a solemn declaration to the effect following: (*e*)

Declaration of qualification,

Form of.

I, *A. B.*, do solemnly declare that I am a natural born (*or* naturalized) subject of Her Majesty; and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*), as proprietor (*or* tenant, *as the case may be*), at the time of my election (*or* appointment, *as the case may require*), to the office of hereinafter referred to, such an estate as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected or appointed*), and that such estate is (*the nature of the estate to be specified, as* an equitable estate of leasehold *or otherwise, as the case*

(*d*) The election of a head of the council is "a duty," within the meaning of this section. See *In re Hawk and Ballard*, 3 U. C. C. P. 241.

(*e*) Notwithstanding the use of the word "estate" in the form of declaration of office, a member of a council is nevertheless qualified if the rating of the value on the roll be sufficient in amount. *Reg. ex rel. Bole* v. *McLean*, 6 P. R. 249. It was attempted to unseat a member of a council on the ground that he had not, in his declaration of office, specified the nature of the estate; but it was held that such an objection could not be made a ground for setting aside an election under the summary provisions of the statute. *Reg. ex rel. Halsted* v. *Ferris*, 6 U. C. L. J. N. S. 266. Until a person has made the declaration required by this section he has no right to exercise the functions pertaining to the office to which he is elected. Where an alderman elect did not state in his declaration the nature of his estate, or the value of the land, but declared that his property was sufficient to qualify him "according to the true intent and meaning of the municipal laws of Upper Canada" the declaration was held insufficient. *Reg. ex rel. Clancy* v. *St. Jean*, 46 U. C. Q. B. 77. It is to be observed that there is no declaration in the statute to the effect that an omission to take the declarations required shall be a forfeiture of office. See *Reg.* v. *Humphrey*, 10 A. & E. 335. Where the declaration of qualification had not been made leave was given to the defendant to make the same within ten days, otherwise leave was granted to file an information on the ground that the defendant illegally exercised the franchises of the office. *Reg. ex rel Clancy* v. *Conway*, 46 U. C. Q. B. 85. An alderman's right to the office on the ground of an insufficient declaration of qualification and for the want of qualification may be questioned by a *quo warranto* at the instance of a ratepayer not a voter of or resident in the ward. *Reg. ex rel Clancy* v. *St. Jean*, 46 U. C. Q. B. 77. A refusal to take the oaths of office has been held equivalent to a refusal of the office. *Rex* v. *Larwood*, Carthew 306; *Exeter* v. *Starre*, 2 Show. 158; *S. C.* in error, 3 Lev. 116. Upon the declarations being made, the office becomes full, *de facto*. *Rex* v. *Swyer*, 10 B. & C. 486; *Rex* v. *Winchester*, 7 A. &. E. 215. Before the court will entertain an application for a *quo warranto*, it must be made to appear that the declarations required by the statutes were made. *Reg.* v. *Slatter*, 11 A. & E. 505; see, also, *Rex* v. *Tate*, 4 East. 337. See further, note *n* to sec. 277.

may require, and if land, the same to be designated by its local description, rents or otherwise), and that such estate at the time of my election (*or* appointment, *as the case may require*) was of the value of at least (*specifying the value*) over and above all charges, liens and encumbrances affecting the same.

(2) Where any person has been elected as reeve, deputy-reeve, or councillor of any township council he may, instead of the foregoing declaration, make and subscribe a solemn declaration to the effect following:

I, *A. B.*, do solemnly declare that I am a natural born (*or* naturalized subject of Her Majesty; and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*) as proprietor at the time of my election to the office of hereinafter referred to, such an estate as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected*), and that such estate is (*the nature of the estate to be specified and the land to be designated by its local description*) and that such estate at the time of my election was in my actual occupation, and was actually rated in the then last-revised assessment roll of this township (*naming it*) at an amount not less than $2,000. 46 V. c. 18, s. 272; 49 V. c. 37, s. 4.

Declaration of office to be made by certain officers.

271. Every member of a municipal council, every mayor, and every clerk, treasurer, assessor and collector, engineer or clerk of works and street overseer or commissioner appointed by a council shall also before entering on the duties of his office, make and subscribe a solemn declaration to the effect following:—

Form of declaration of office.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of *(inserting the name of the office)*, to which I have been elected (*or* appointed) in this township *(or as the case may be)*, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office, and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said Corporation. 51 V. c. 28, s. 15.

Declaration of returning officers and others.

272. (*a*) Every returning officer, deputy returning officer, poll clerk, constable and other officer appointed by a council shall, before entering upon the duties of the office, make and subscribe a solemn declaration to the effect following:—

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*), to which I have been elected (*or* appointed) in this township (*or as the case may be*), and that I have not received, and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office. 51 V. c. 28, s. 15.

Auditor's declaration.

272. The solemn declaration to be made by every auditor (*g*) shall be as follows:

Form of.

I, *A. B.*, having been appointed to the office of Auditor for the Municipal Corporation of , do hereby promise and declare that I will faithfully perform the duties of such office according to the best of my judgment and ability; and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (except that of Auditor, *if re-appointed*) with, by or on behalf of such Municipal Corporation, during the year preceding my appointment, and that I have not any such contract or employment, except that of Auditor for the present year

46 V. c. 18, s. 274.

Before whom declaration to be made.

273. The head and other members of the council, and the subordinate officers of every municipality, shall make the declaration of office and qualification before some Court, Judge, Police Magistrate, or other Justice of the Peace having jurisdiction in the municipality for which such head, members or officers have been elected or appointed, or before the clerk of the municipality; (*h*) and the Court, Judge, or other persons before whom such declarations are made, shall give the necessary certificate of the same having been duly made and subscribed (*i*). 46 V. c. 18, s. 275.

Certificate of declaration.

Certain officers may administer certain oaths, etc., within municipality.

274. The head of any council, any alderman, reeve or deputy reeve, any Justice of the Peace or clerk of a municipality may, within the municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to make the oath, affirmation or declaration (*j*). 46 V. c. 18, s. 276.

(*g*) See sec. 258.

(*h*) The administering of the declarations of office is so far obligatory as to be enforceable by a penalty. See sec. 277.

(*i*) The certificate is to the effect that the declaration has been made *and* subscribed—two things essentially different, but each necessary to complete the taking of the declaration. See *Reg. ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.

(*j*) The authority of the officers named, is not to administer all oaths, affirmations or declarations, but only such as relate to the business of the place in which the officer administering the oath, affirmation or declaration holds office, and thus is made subject to two obvious exceptions: 1. Where otherwise specially provided. 2. Where he is the party required to make the oath, affirmation or delaration.

Oath, affirmation or declaration to be subscribed and deposited with clerk of municipality.

275. The deponent, affirmant, or declarant shall subscribe every such oath, affirmation or declaration, (*k*) and the person administering it (*l*) shall duly certify and preserve the same, and within eight days deposit the same in the office of the clerk of the municipality to the affairs of which it relates. 46 V. c. 18, s. 277.

Head of council may administer certain oaths, &c.

276. The head of every council, or in his absence the chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the council. (*m*) 46 V. c. 18, s. 278.

Penalty for refusing to accept office, or administer declaration, &c.

277. Every qualified person duly elected or appointed (*n*) to be a mayor, alderman, reeve or deputy-reeve, councillor, police trustee, assessor or collector of or in any municipality, (*o*) who refuses such office, (*p*) or does not within twenty days

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(*k*) A deponent is one who makes a lawful oath; an affirmant is one who by law is permitted to affirm when otherwise he would be required to make an oath; and a declarant is a person who, instead of making either oath or affirmation, makes a solemn declaration.

(*l*) See note *h* to sec. 273.

(*m*) Heads of councils may, under section 274, administer oaths, affirmations or declarations "relating to the business of the place in which he holds office." This section extends the power to oaths or affirmations "concerning *any* account or *other* matter submitted to the council," and enables the chairman acting in the absence of the head of the council, to administer the last mentioned oaths or affirmations. The purpose, apparently, is that some officer may be able to act when necessary to verify accounts or other matter submitted to the council.

(*n*) This section is only obligatory upon *qualified* persons, so that persons disqualified under section 77 or exempted under section 78, though elected, would not, it is believed, be bound to take the declarations of office and qualification. See *Rex* v. *Leyland*, 3 M. & S. 186. The acceptance by an office-holder of another office incompatible with the first is *ipso facto* a vacation of the first office. *Stubbs* v. *Lee*, 18 Am. 251.

(*o*) The section only applies to the officers named and to a qualified person appointed or elected, and, when elected, himself returned as elected. *Reg. ex rel. Mackley* v. *Cooks*, 3 E. & B. 249. It would not apply where another was returned, though improperly. *Ib.* As to officers other than those named, see sec. 479, sub.s. 17 *a*.

(*p*) The acceptance of the office, when the person is qualified, is obligatory. It is an offence at common law for a person to refuse to serve in an office when duly elected. *Vintner's Co.* v. *Passey*, 1 Burr. 239; *Reg.* v. *May*, 20 L. J. Q. B. 268. A person so refusing may be indicted, *Rex* v. *Burder*, 4 T. R. 778; *Vanacker's Case*, 1 Ld. Rayd. 496, or, in case of urgency, may be proceeded against by criminal

after knowing of his election or appointment, make the declarations of office and qualification where a property qualification is required, (*q*) and every person authorized to administer such declaration, who upon reasonable demand refuses to administer the same, (*r*) shall on summary conviction thereof before two or more Justices of the Peace, forfeit not more than $80, nor less than $8, at the discretion of the Justices, to the use of the municipality, together with the cost of prosecution. (*s*) 46 V. c. 18, s. 279.

DIVISION VIII.—SALARIES, TENURE OF OFFICE AND SECURITY.

Appointment and remuneration of officers. *Sec.* 278.
Tenure of office and duties. *Sec.* 279.
Gratuities to retiring officers. *Sec.* 280.
Security to be given by officers. *Sec.* 281.

Salaries of officers.

278—(1) In case the remuneration of any of the officers of the municipality (*a*) has not been settled by Act of the

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information, *Rex* v. *Woodrow*, 2 T. R. 731; *Rex* v. *Leyland*, 3 M. & S. 186, or mandamus, *Rex* v. *Whitwell*, 5 T. R. 85; *Rex* v. *Bower*, 1 B. & C. 585, in the discretion of the Court, *Rex* v. *Grosvenor*, 2 Str. 1193: *Reg.* v. *Hungerford*, 11 Mod. 142. But, in any event, it must appear that the person elected had notice of the election. *Reg.* v. *Preece*, 5 Q. B. 94; *Reg.* v. *Coaks*, 3 E. & B. 249.

(*q*) Casual information is not sufficient. Before an elected officer can be visited with heavy penalties, imposed for neglecting to accept his office, he must have regular notice of his election, either by being present when it is announced, or being apprised of the fact by some official authority. *Reg.* v. *Preece*, 5 Q. B. 97; see also *London* v. *Vanacre*, 1 Salk. 142.

(*r*) The administering of the declaration is purely a ministerial act. But it has been held that the person administering it so far acquiesces as to disentitle himself to be a relator in proceedings to set aside the election. *Reg.* v. *Greene*, 2 Q. B. 460.

(*s*) This section does not declare that the payment of the fine shall be in lieu of service. Mere payment of the fine is not any excuse for non-acceptance of the office. See *Rex* v. *Bower*, 1 B. & C. 585, and *Reg. ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101. Nor is it declared that the omission to take the declaration within the time limited shall be a forfeiture of office. *Reg. ex rel. Forsyth* v. *Dolsen*, 7 U. C. L. J. 71.

(*a*) Under a power to remunerate all "township *officers*," it was held that municipal councillors had no authority to remunerate themselves. *In re Wright and Cornwall*, 9 U. C. Q. B. 442; *Daniels* v. *Burford*, 10 U. C. Q. B. 478; *East Nissouri* v. *Horseman*, 16 U.

Legislature (*b*) the council shall settle the same, and the council shall provide for the payment of all municipal officers whether the remuneration is settled by statute or by by-law of the council. (*c*)

C. Q. B. 576. And it was made a question whether the warden of a county, or mayor a of city, is to be deemed an officer, so as to be entitled to remuneration as such. *Reg.* v. *Gore*, 5 U. C. Q. B. 357; *In re McLean and Cornwall*, 31 U. C. Q. B. 314. But now such questions are to some extent set at rest, for the council of every township and county may pass by-laws for paying the members of the council for their attendance in council, sec. 231, and so the head of the council of any county, city, town or incorporated village may be paid such annual sum or other remuneration as the council sees fit. Sec. 232.

(*b*) Where a Municipal Council, in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary for that year "in lieu of all fees," it was held that this did not debar him from claiming fees allowed by the Jury Act, 13 & 14 Vict. cap. 55, which was passed subsequently in the same year. *Pringle* v. *McDonald*, 10 U. C. Q. B. 254. General power to fix the compensation of its officers, does not authorize the corporation to take away the fees of an officer specifically fixed by their charter. *Carr* v. *St. Louis*, 9 Mo. 190. So, if the Legislature provide that one board shall fix the remuneration of corporation officers, it is not competent for another board to do so. *People* v. *Auditors of Mayne*, 13 Mich. 233; *In re Prince and Toronto*, 25 U. C. Q. B. 175.

(*c*) Municipal officers are not entitled to compensation unless the right to compensation is expressly given by statute, by-law, resolution or contract. *Jones* v. *Carmarthen*, 8 M. & W. 605; *Thomas* v. *Swansea*, 2 Dowl. N. S. 470; *Reg.* v. *Prest*, 16 Q. B. 32; *Rockford, &c., R. W. Co.* v. *Sage*, 16 Am. 587; *Sikes* v. *Hatfield*, 13 Gray (Mass.) See Dillon on Municipal Corporations 3rd Ed. s. 230. And where provision is made for their remuneration by salary, they have no claim for compensation, *extra* the salary, for services alleged to be outside of their official duties; *Ib.* s. 233 and for this reason it has been held that a promise to pay *extra* the sum fixed by by-law or regulation on the subject, is not binding, though greater services have been rendered than could have been legally exacted; *Ib.* s. 234 and, indeed, in the interest of the public the rule has been carried so far as to prevent a municipal officer recovering a reward for a service embraced within his official duties, such as the capture of a thief by a constable. *Gilmore* v. *Lewis*, 12 Ohio, 281; *Pool* v. *Boston*, 5 Cush. (Mass.) 219. Where a town corporation appointed a chief of police at a named salary, stipulating that he should act as county constable within the town only, and account for and pay over all fees received by him from the county as a reward for services performed by him as county constable, it was held under 5 & 6 Edw. 6 and 49 Geo. 3, c. 126 that the agreement was invalid. *Stratford* v, *Wilson*, 8 O. R. 104. Salaries, when voted, should be given as salaries, and not as acts of grace or mere rewards for merit. *In re McLean and Cornwall*, 31 U. C. Q. B. 314; *Heslep* v. *Sacramento*,

Mode of appointment.

(2) No municipal council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof, by tender or to applicants at the lowest remuneration. (*d*)

When municipality employing solicitor at a salary may recover costs.

(3) Where a solicitor or counsel, is employed by a municipality, whose remuneration is wholly or partly by salary, annual or otherwise, the municipality shall, notwithstanding, have the right to recover and collect lawful costs in all actions and proceedings in the same manner as if the solicitor

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2 Cal. 580; *Smith* v. *Commonwealth*, 41 Pa. St. 335; *Devoy* v. *New York*, 39 Barb. (N. Y.) 160; *Bladen* v. *Philadelphia*, 60 Pa. St. 464; *Philadelphia* v. *Given*, *Ib.*, 136. By-laws fixing salaries are not, *per se*, to be looked upon as contracts. *Commonwealth* v. *Bacon*, 6 Serg. & Rawle. (Pa.) 322; *Baker* v. *Pittsburg*, 4 Pa. St. 49; Dillon on Municipal Corporations, 3rd ed., secs. 231, 232. The corporation may indemnify its own officers in matters in which the corporation is interested. *Pike* v. *Middleton*, 12 N. H. 278; *Briggs* v. *Whipple*, 6 Vt. 95; *Bancroft* v. *Lynnfield*, 18 Pick. (Mass.) 566; *Babbitt* v. *Savoy*, 3 Cush. (Mass.) 530; *Nelson* v. *Milford*, 7 Pick. (Mass.) 18: *Hasdell* v. *Hancock*, 3 Gray (Mass.) 526; *Page* v. *Frankford*, 9 Greenl. (Me.) 115; *Baker* v. *Windham*, 3 Maine 74. It is otherwise where the corporation is not interested or concerned in the matter involved. *Halstead* v. *New York*, 3 Comst. (N.Y.) 430; *Morris* v. *People*, 3 Denio. (N.Y.) 381; *People* v. *Lawrence*, 6 Hill. (N.Y.) 244; *Bank* v. *Supervisors*, 5 Denio. (N. Y.) 517; *Merrill* v. *Plainfield*, 45 N. H. 126; *Vincent* v. *Nantucket*, 12 Cush. (N.Y.) 103; *Pike* v. *Middleton*, 12 N. H. 281. An indemnity to an officer for *lawful acts* gives him no claim for compensation against the consequences of unlawful acts. *Irwin* v. *Mariposa*, 22 U. C. C. P. 367. A by-law to indemnify a councillor for the costs of a contested election would be illegal. *In re Bell and Manvers*, 2 U. C. C. P. 507; 3 U. C. C. P. 400. An agreement by a corporation with one of its officers for an increase of the salary of an office retained by him as compensation for the loss of an office of which he was deprived, is not binding unless under the seal of the corporation. *Reg.* v. *Stamford*, 6 Q. B. 433; see also *Cope* v. *Thames*, &c., *Dock and Railroad Co.*, 3 Ex. 841. So the appointment of a corporation solicitor should be under the corporation seal. *Arnold* v. *Poole*, 4 M. & G. 860. A town clerk, if a solicitor, may have a lien on papers of the corporation, with respect to which he has done work as solicitor. *Rex* v. *Sankey*, 5 A. & E. 423.

(*d*) The lowest tender is not always the most satisfactory for acceptance; and so much has this been found the case in the management of municipal affairs, that the Legislature has been compelled to interfere. Poor pay, poor service is generally the rule. Good pay to good servants will, in the long run, be found to be true economy. Notwithstanding, this provision apparently intended to prevent public offices from being put up to public competition, public officials too frequently receive the lowest remuneration upon the ground that others can be found to fill the office for even a less sum.

or counsel, was not receiving a salary, when the costs are, by the terms of his employment, payable to the solicitor or counsel as part of his remuneration in addition to his salary. (*dd*) 46 V. c. 18, s. 280.

Tenure of office.

279. All officers appointed by a council (*e*) shall hold office until removed by the council, and shall, in addition to the duties assigned to them in this Act, perform all other duties required of them by any other statute, or by the by-laws of the council. (*f*) 46 V. c. 18, s. 281.

Duties.

(*dd*) As to the effect of an attorney being paid a salary in lieu of costs. See *Jarvis* v. *Great Western R. W. Co.*, 8 U. C. C. P. 280; *Stevenson* v. *City of Kingston*, 31 U. C. C. P. 333.

(*e*) This section applies to all officers appointed by the council, no matter what their rank or duties. Their tenure is in effect during pleasure. The declaration that they are to hold office "until removed by the Council," impliedly authorizes the council to remove them at any time—in other words, at the pleasure of the council. Unless, at all events, there be an appointment at a yearly salary under the corporate seal, or other appointment from which a yearly hiring be inferred, there will be no holding except during the pleasure of the council. See *In re Macpherson and Beeman*, 17 U. C. Q. B. 99; *Beverley* v. *Barton*, 10 U. C. C. P. 178. See further *Hammond* v. *McLay*, 28 U. C. Q. B. 463. As to the removal of an officer holding a freehold office. See *Osgood* v. *Nelson*, L. R. 5 H. L. 636. Where the appointment is under seal, it may be held binding on the corporation without proof of a By-law. *Broughton* v. *Brantford*, 19 U. C. C. P. 434. A person, therefore, who enters into the employment of a municipal corporation, must be taken to do so with the fullest knowledge of his dependence on the pleasure of the present and every future council. *Hickey* v. *Renfrew*, 20 U. C. C. P. 429; *Willson* v. *York*, 46 U. C. Q. B. 289. In such a case it is in the power of the council to remove, without notice or hearing. See *Bagg's Case*, 11 Coke 98 (*b*); *Rex* v. *Coventry*, 1 Ld. Rayd. 391; *Gaskin's Case*, 8 T. R. 209; *Rex* v. *Oxon*, 2 Salk. 428; *Rex* v. *Mayor*, &c., 1 Lev. 291; *Rex* v. *Andover*, 1 Ld. Rayd. 710; *Field* v. *Commonwealth*, 32 Pa. St. 478; *Ex parte Hennen*, 13 Pet. (U. S.) 230; *Hoboken* v. *Gear*, 3 Dutch. (N. J.) 265. But the officer removed, although not appointed under seal, should be paid for the time he served. *Dempsey* v. *City of Toronto*, 6 U. C. Q. B. 1. Where a municipal corporation appoints an officer, in obedience to a statute to perform a public service in which the corporation has no private interest, and from which it derives no special benefit or advantage in its corporate capacity, such officer cannot be regarded as the servant or agent of the corporation, so as to render the corporation liable for his negligence. *Maxmilian* v. *Mayor*, 20 Am. 468.

(*f*) This provision is made for a twofold purpose; to prevent the discharge of sureties by the imposition of additional duties; and to prevent claims being made or sustained for extra pay. See note *c* to sec. 278.

A gratuity may be given in certain cases.

280. Any municipal council, other than a provisional council, may grant to any officer who has been in the service of the municipality for at least twenty years, and who has, while in such service, become incapable through old age of efficiently discharging the duties of his office, a sum not exceeding his aggregate salary or other remuneration for the last three years of his service, as a gratuity upon his removal or resignation. (*g*) 46 V. c. 18, s. 282.

Corporations, &c., may accept security of certain companies for their officers.

281. The bonds or policies of guarantee of any incorporated or joint stock company, empowered to grant guarantees, bonds or policies for the integrity and faithful accounting of public officers and other like purposes, may be accepted instead of, or in addition to, the bond or security of any officer or servant of a municipal corporation, in all cases where by the provisions of this or any other Act or of any by-law of such corporation, such officer or servant is required to give security, either by himself, or by himself and a surety or sureties, and where the parties directed or authorized to take such security see fit to accept the bond or policy of such company as aforesaid, and approve the terms and conditions thereof; and all the provisions in such Act relating to such security, to be given by such officer or servant, or his sureties, shall apply to the bonds and policies of guarantee of such company as aforesaid, which may be taken instead of, or in substitution of, any existing securities, if the parties directed or authorized as aforesaid see fit, whereupon such

Provisions respecting such security to apply.

Existing bonds may be cancelled.

(*g*) As municipal officers hold office until removed, a removal may be had for any cause, or without cause. See note *e* to sec. 279. If the power of removal were only for cause, old age would not be good cause. Bac. Abr. Corp. E. 9; *Hazard's Case*, 2 Rolle 11. But as the holding is different, an old servant might be dismissed simply because old and worn out in the service. In such a case without legislation, there is no power in a municipal corporation to grant a gratuity. Service for any period *less* than twenty years, or incapacity from any other cause than old age, gives no right to the exercise of the power. The amount of the gratuity, which is to be paid in bulk, must be a sum "not exceeding his aggregate salary, or other remuneration, for the last three years." The gratuity is only to be paid on removal or resignation. The decision as to a gratuity, when made under the circumstances and within the limits prescribed, is not subject to review by any court. *Re Reg.* v. *Sandwich*, 2 Q. B. 895, *S. C. In error*, 10 Q. B. 563. There is a distinction between gratuity and annuity. See *Gibson* v. *East India Co.*, 5 Bing. N. C. 262; *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315; *Innes* v. *East India Co.*, 17 C. B. 351; *Marchant* v. *Lee Conservancy Board*, L. R. 8 Ex. 290.

existing securities shall be delivered up to be cancelled. (*h*) 46 V. c. 18, s. 283.

PART VI.

GENERAL PROVISIONS APPLICABLE TO ALL MUNICIPALITIES.

TITLE I.—GENERAL JURISDICTION OF COUNCILS.
II.—RESPECTING BY-LAWS.
III.—RESPECTING FINANCE.
IV.—ARBITRATIONS.
V.—DEBENTURES AND OTHER INSTRUMENTS.
VI.—ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

TITLE I.—GENERAL JURISDICTION OF COUNCILS.

DIVISION I.—NATURE AND EXTENT.

Confined to municipality—how exercised. *Sec.* 282.
General powers. *Secs.* 283, 284.
Traders' license fees. *Sec.* 285.
May not grant monopolies—Except as to ferries. *Secs.* 286, 287.

282. The jurisdiction of every council (*a*) shall be confined to the municipality the council represents, except Jurisdiction of councils.

(*h*) See notes to sec. 249 ; and R. S. O. c. 181.

(*a*) The word "jurisdiction" is here used in the sense of power. Municipal corporations are the creatures of the Legislature. "They can exercise no powers but those which are conferred upon them by the Act under which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purpose of their association. This principle is derived from the nature of corporations, the mode in which they are organized, and in which their affairs must be conducted. In aggregate corporations, as a general rule, the act and will of the majority is deemed in law the act and will of the whole, or as the act of one corporate body ; the consequence is, that a minority may be bound not only without but against their consent. Such an obligation may extend to every onerous duty, to pay money to an unlimited amount, to perform services, to surrender lands and the like. It is obvious, therefore,

where authority beyond the same is expressly given, (*b*) and the powers of the council shall be exercised by by-law (*c*)

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that if this liability were to extend to *unlimited* and *indefinite* objects, the citizen, by being a member of a corporation, might be deprived of his most valuable personal rights and liberties. The security against this danger is in a steady adherence to the principle stated, viz., that corporations can only exercise their power over their respective members for the accomplishment of limited and defined objects." *Per* Shaw, C. J., in *Spaulding* v. *Lowell*, 23 Pick. (Mass.) 71. See also *Noyes* v. *Mason*, 5 N. W. R. 595 ; *In re Frank*, 52 Kell. 506 ; *Green* v. *CapeMay*, 41 N. J. L. 45. See further, note *i* to sec. 8.

(*b*) A municipality, whether a county, city, town, township or village is a locality ; and the council is the governing body of that locality. Beyond the limits of the locality the council has not in general any authority whatever. For this reason, the section begins by declaring that "the jurisdiction of every council shall be confined to the municipality the council represents." See note *p* to sec. 14, and note *k* to sec. 20. A municipal council cannot in general, benefit another municipality at the expense of its own ; for instance, build a school-house in a township of which it is not the representative, but this proposition may not always apply as between townships and counties. For many purposes a township is within the jurisdiction of the council of the county in which it is situate, and is subject to be taxed for county purposes by the county council ; but the right of a township council to tax itself in aid of the county is limited. It would seem that a township council has no right voluntarily to pass a by-law imposing a rate in aid of a county rate. *Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129. So the right of a township council to pass a by-law in aid of the cost of a school-house ordered by the county council is doubtful. *Kennedy* v. *Sandwich*, 9 U. C. Q. B. 326. A township by-law was quashed as to so much of it as related to the raising of a sum of money to defray the demands of the county council on the township, and as an equivalent to the Government school grant, &c., it not appearing on the face of the by-law that it was directed to the purpose of meeting a deficiency, nor even that there was any, if that would have authorized the by-law. *Fletcher* v. *Euphrásia*, 13 U. C. Q. B. 129.

(*c*) The jurisdiction of every council is not only to be confined to the municipality the council represents, but shall be exercised by by-law when not otherwise authorized or provided for. When a corporation is duly erected, the law tacitly annexes to it the power of making by-laws or private statutes. This power is included in every Act of Incorporation ; for, as is quaintly observed by Blackstone, "as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic." 1 Bl. Com. 476. It would seem that this requirement refers only to the exercise of powers under this Act, and not to powers which may be exercised under a special Act passed for other purposes or by another Legislature. *Pembroke* v. *Canada Central Ry.*, 3 O. R. 503. Though the power to make by-laws is unquestionably an incident of every corporation, it is rarely left to implication ; but is usually conferred in express terms. According to Lord Coke, the word "by" or

when not otherwise authorized or provided for. (*d*) 46 V. c. 18, s. 284.

"bye" signifies a habitation. Willcock on municipal corporations, 73. Hence *by*-law or *bye*-law may be defined as being the law of the inhabitants of some corporate place or district, as distinguished from the general law of the Province in which the municipality is situate. A by-law is a rule obligatory over a particular district, not b ing at variance with the general laws, and being reasonably adapted to the purposes of the corporation. *Gosling* v. *Veley*, 19 L. J. Q. B. N. S. 135. A by-law must be reasonably clear and unequivocal in its language in order to vary the common law. *Crowe* v. *Steeper*, 46 U. C. Q. B. 87. A by-law has the same force, within the limits of the municipality, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the people at large. *Hopkins* v. *Swansea*, 4 M. & W. 621; see also *Reg.* v. *Osler*, 32 U. C. Q. B. 324; *Heeland* v. *Lowell*, 3 Allen (Mass.) 407; *Presbyterian Church* v. *New York*, 5 Cow. (N.Y.) 538; *Baker* v. *Portland*, 10 Am. Law Reg. N. S. 559. The courts recognize judicially what municipal councils are competent to do, and hold that it is not necessary for them to recite in a by-law all that is requisite to shew that they have proceeded regularly in passing it. *Grierson* v. *Ontario*, 9 U. C. Q. B. 623; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492; see further, *Rex* v. *Harrison*, 3 Burr. 1328; *Roman Catholic Church* v. *Baltimore*, 6 Gill (Md.) 394; *Stuyveysant* v. *New York*,, 7 Cow. (N.Y.) 588.

(*d*) It is a common belief that a municipal body can do by resolution whatever may be done by by-law. Nothing can be more erroneous, or more tend to the insecurity of municipal government. See *Reg. ex rel. Allemaing* v. *Zoeger*, 1 P. R. 219. The general principle of the common law is that a corporation can only act through its seal, and the express declaration of the Legislature here is that "the powers of the council *shall* be exercised by by-law when *not otherwise* authorized or provided for." But among people generally, and among the class composing municipal councils particularly, there is a dislike of formality, and, in consequence, the too frequent abandonment of by-laws for mere orders or resolutions. Now, the proceedings of a municipal council that may be lawfully had by order or resolution, are comparatively few and unimportant. A by-law should not be dispensed with unless in a very clear case. In fact, whenever a municipal council is in doubt whether it can or cannot do a particular thing by order or resolution, it would be much safer and wiser to use a by-law. Were this, as a rule, understood and followed, it would prevent much confusion in the administration of municipal affairs. Another common but erroneous belief is, that a municipal council can by order or resolution do that which, if done through a by-law, would be illegal. This it cannot do. No municipal council can do that informally which it has no power to do directly and formally. *Daniels* v. *Burford*, 10 U. C. Q. B. 478. A by-law, order or resolution, which revives an illegal by-law, is of course itself illegal. *Canada Co.* v. *Oxford*, 9 U. C. Q. B. 567. An order or resolution duly signed and sealed is virtually a by-law; but many orders and resolutions pass by mere vote, without being thus authenticated. The municipal rules of proceeding generally require more formal steps to be taken in passing a by-law than in adopting

General power to make regulations:

283. Every council may make regulations (*e*) not specifically provided for by this Act, and not contrary to law, for governing the proceedings of the council, the conduct of its members, the appointing or calling of special meetings of the

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an order or resolution. Municipal corporations, however, may become liable as wrong-doers for things done by direction of the council without by-laws. *Croft* v. *Peterborough*, 5 U. C. C. P. 35; *Nevill* v. *Ross*, 22 U. C. C. P. 487; *Darby* v. *Crowland*, 38 U. C. Q. B. 338; *Lewis* v. *Toronto*, 39 U. C. Q. B. 343. The power to make by-laws necessarily supposes the power to enforce them by pecuniary penalties, competent and proportionable to the offence. See sec. 479, sub-s. 17. In construing a by-law, &c., the court will look at the whole of it, to ascertain its meaning, and construe one part with another or other parts, so as, if possible, to give full effect to the whole. *In re Cameron and East Nissouri*, 13 U. C. Q. B. 190.

(*e*) The word "regulations" may be used in a general sense as laws, or in a particular sense as informal resolutions. See *In re Snell and Belleville*, 30 U. C. Q. B. 81. It is not clear in which sense the word is here used. The power is to make regulations for the purposes mentioned, and generally such other regulations as the good of the inhabitants requires. See *Ross* v. *York and Peel*, 14 U. C. C. P. 171; *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. *Provided* the regulations be not contrary to law.

It is a principle applicable to every regulation of a municipal corporation, first, that it be not contrary to the Municipal Acts or law authorizing the formation of the corporation, and, secondly, that it be not contrary to the general law of the land.

First—The regulations of the municipal council must not be inconsistent with the Municipal Acts, for these Acts create it an artificial being, impart to it its power, designate its object, and prescribe its mode of operation: they are in short the constitution of the corporation. Hence all laws in contravention of them are void. "The true test of all by-laws," says Mr. Justice Wilmot, "is the intention of the Crown in granting the charter, and the apparent good of the Corporation." *Rex* v. *Spencer*, 3 Burr. 1838. So of a municipal council; it may be said that the true test of a by-law is the intention of the Legislature in incorporating the council, and the apparent good of the municipality affected. Mr. Justice Yates, in the same case, said: "Corporations cannot make by-laws contrary to their constitution. If they do so, they act without authority." *Ib.* 1839; but see "The Case of Corporations," 4 Co. R. 77, 78. As transcending the Municipal Acts, by-laws creating a new office, imposing an oath of office where none is required by the Act, giving a vote to a class of persons not entitled to vote by law, qualifying persons to be candidates not qualified by the Acts, giving a casting vote to an officer not entitled to it by the Acts, restricting or extending the right of admission or eligibility to office, altering the prescribed mode of election, or imposing new or additional tests or qualifications either on members or voters, would be void. See Angell & Ames on Corporations, 345. See also *Rex* v. *Miller*, 6 T. R. 277; *Rex* v. *Barber Surgeons*, 1 Ld. Rayd. 584; *State* v. *Bruder*, 38

council, and generally such other regulations as the good of the inhabitants of the municipality requires, and may repeal, alter and amend its by-laws, save as by this Act restricted. (*ee*) 46 V. c. 18, s. 285.

To repeal, alter, etc., by-laws.

Mo. 450; *Thompson* v. *Carroll*, 22 How. 422; *Andrews* v. *Insurance Co.*, 37 Maine 256; *In re Bell* v. *Manvers*, 3 U. C. C. P. 399; *Re Clark and Township of Howard*, 9 O. R. 576.

Second—The law of a country being as well a rule for the proceedings of corporations as for the conduct of individnals, all by-laws contrary to the common or statute law of the country are void. "All by-laws," says Hobart, "must ever be subject to the general law of the realm and subordinate to it," *Norris* v. *Staps*, Hob. 210. See also *Crowe* v. *Steeper*, 46 U. C. Q. B. 87. For this reason, a by-law "impairing the obligation of contracts," or taking "private property for public uses without just compensation," would be void. Angell & Ames on Corporations, 333. But where a statute authorized the corporation of a city to make by-laws "regulating," or, if necessary, "preventing," the interment of the dead within the city, it was held that though that corporation had granted lands for the purpose of interment, and had covenanted that they should be quietly enjoyed for that purpose, yet that the corporation was not thereby estopped from passing a by-law forbidding such interment, under a penalty. *Ib.* The case was decided on the ground that the legislative power of the corporation over this subject was delegated to it *for the good of the city*, and that the by-law passed was to be regarded as if passed by the Legislature; that no person is entitled to use his property so as to injure another, and that no covenant could give him power so to do, even though made with the corporation, since, as tending to control and embarrass the exercise of its important powers as a *Local Legislature*, the covenant, when it came in competition with them, must give way or was repealed. *Ib.* The legislative power of a corporation is not only restricted by the statute law, but by the general principles and policy of the common law. Indeed, whenever a by-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shewn to legalize it, either expressly or by implication. It is upon this principle that, though many by-laws passed by the ancient municipal corporations in England for the *regulation* of trade have been adjudged good, yet many were adjudged void as in *restraint* of trade and an oppression of the subject. See sec. 286 and notes. See further *Collins* v. *Hatch*, 18 Ohio 523; *Sill* v. *Corning*, I. E. P. Smith (N. Y.) 297; *Wood* v. *Brooklyn*, 14 Barb. (N. Y.) 425; *Markle* v. *Akron*, 14 Ohio 586; *Rogers* v. *Jones*, 1 Wend. (N. Y.) 237.

(*ee*) It need hardly be mentioned that the municipal body which has power to make has power to repeal by-laws; it being of the very nature of legislative power that, by timely changes in the rule it prescribes, it should be enabled to meet the exigencies of the occasion. *Rex* v. *Bird*, 13 East. 379; *Bloomer* v. *Stolley*, 5 McL. (U. S.) 158. Repeals cannot be made to operate retrospectively to the prejudice

Council a continuing body.

284. A municipal council shall be deemed and considered as always continuing and existing, notwithstanding any annual or other election of the members composing the same, and upon and after the annual or other election of the members thereof, and their having organized and held their first meeting as a council, every council may take up and carry on to completion all by-laws, reports and proceedings which had been begun or have been under consideration by the council, either in the then next preceding year or subsequent or prior thereto, and it shall not be necessary to begin *de novo* with any by-law, proceeding, report, matter or thing entertained by the council in such preceding year, or subsequent or prior thereto, as aforesaid. 49 V. c. 37, s. 43.

Traders' license fees.

285. In all cases where, under the provisions of this Act, or of any other Act, any council or the board of commissioners of police, in any city, or either of them, is or are authorized to pass by-laws for licensing any trade, calling, business, or profession, or the person carrying on or engaged in any such trade, calling, business, or profession, the council and the board of commissioners of police, respectively, shall have the power to pass by-laws for fixing the sum to be paid for such license, for exercising any such trade, calling, business, or profession, in the municipality, and enforcing the payment of the license fee, and determining the time the license shall be in force. 46 V. c. 18, s. 286.

Granting monopolies prohibited.

286. No council shall have the power to give any person an exclusive right of exercising within the municipality any

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of vested rights. *Rex* v. *Ashwell*, 12 East. 22; *State* v. *City Clerk*, 7 Ohio St. 355; *Pond* v. *Negus*, 3 Mass. 230; *Bigelow* v. *Hillman*, 37 Maine 52; *Road in Augusta*, 17 Pa. St. 71; unless for the purpose of abating an actual nuisance, or something of that character. *New Orleans* v. *St. Louis Church*, 11 La. An. 244; *Musgrove* v. *Catholic Church*, 10 La. An. 431. The power does not extend to all by-laws. There are certain by-laws, such as those authorizing the issue of debentures, &c., upon the faith of which third persons act and change their circumstances, and from which the municipality in general derives an immediate benefit—these being in the nature of securities, rather than ordinary regulations, cannot be repealed until the loan or debt arising thereout or dependent thereupon is satisfied. Sec. 347. Hence it is that in this section the power given is to repeal, alter, or amend by-laws, in general, "save as by this Act restricted." See further *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459; *In re Great Western R. W. Co. and North Cayuga*, 23 U. C. C. P. 28; *Wright* v. *Incorporated Synod of the Diocese of Huron*, 11 S. C. R. 95.

trade or calling, (*f*) or to impose a special tax on any person

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(*f*) Monopolies are odious to the law. A monopoly is when the sale of any merchandise or commodity is restrained to one or to a certain number, 11 Co. 86, and has three inseparable consequents—increase of price, badness of wares, impoverishment of others. *Ib.* By statute 21 Jac. 1, c. 3, all monopolies and all commissions, grants, licenses, &c., to any person, &c., for any sale, buying, selling, making, working, using of a thing, &c., are void. And any one grieved, &c., may have an action on the statute, and recover treble damages and double costs. So monopolies are contrary to Magna Charta. 2 Inst. 63. By statute 38 Edw. 3, a merchant may freely deal in all manner of merchandise. The statute of 21 Jac. 2, does not extend to letters patent for inventions, &c. The first part of this section is simply a declaration of the common law. Whenever a by-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights of individuals or the public, the power to do so must come from plain and direct legislative enactment. *Taylor* v. *Griswold*, 2 Green. (N.J.) 222. Legal restraints, in the form of regulations, may, however, be imposed upon the few for the benefit of the many. *City Council* v. *Ahrens*, 4 Strob (S. Car.) 241; *Charleston* v. *Baptist Church*, *Ib.* 306; *Peoria* v. *Calhoun*, 29 Ill. 317; *St. Paul* v. *Coulter*, 12 Minn. 41. It is sometimes difficult to determine when a by-law is in restraint of trade, and when it is a mere regulation of trade. The former is illegal; the latter legal. The following have been held to be mere regulations and so valid: That no butcher or any other person should, within the walls of the city, slaughter any beast, &c., to forfeit, &c. *Pierce* v. *Bartrum*, Cowp. 269. That no butcher or other person should keep any swine within the walls of the city, upon pain, &c. *Ib.* That no commoner should keep any sheep in the bounds below the weir, under the pain, &c. *James* v. *Tutney*, Cro. Car. 497. That none of the company of Silk Throwsters should have above such a number of spindles in one week. *Freemantle* v. *The Company of Silk Throwsters*, 1 Lev. 229. And *per* Cur. "This is not a monopoly, but a restraint of a monopoly, that none might ingross the whole trade, being rather to provide for an equality of trade, according to what is convenient and good." *Ib.* That no master of any boat, &c., from place to place, &c., should unload or send on shore any goods but by such persons as are of Company and Fellowship of Porters. *Cuddon* v. *Eastwick*, 1 Salk. 192. That no person should exercise the trade of a joiner unless free of the Company of Joiners. *Warinel* v. *London*, 1 Str. 675: see also *Green* v. *Durham*, 1 Burr. 127; *Rex* v. *Master*, *&c.*, *of the Co. of Surgeons*, 2 Burr. 892; *Rex* v. *Harrison*, 3 Burr. 1322. That no drayman or brewer's servant should be abroad in the streets, with his dray or cart, after one of the clock in the afternoon between Michaelmas and Lady Day, and from thence after eleven in the forenoon, under the penalty, &c. *Bosworth* v. *Hearne*, 2 Str. 1085; See further, *Shaw* v. *Pope*, 2 B. & Ad. 465. That no person using the art of a butcher, and inhabiting and dwelling within the city or suburbs thereof, or within two miles of the same city, should keep open any shop, or offer for sale any fresh meat, on Sunday. *The Butchers' Company* v. *Morey*, 1 H. Bl. 370. That no stranger or foreigner should use or exercise the craft or mystery of a tailor

exercising the same, (*g*) or to require a license to be taken for

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within the said city, except he should first be made free of the said city. *Woolley* v. *Idle*, 4 Burr. 1951; see also *Bosworth* v. *Budgen*, 7 Mod. 459. By-laws may, under certain circumstances, be passed exempting manufacturing establishments, in whole or in part, from taxation for a term of years. See sec. 366.

The following have been held to be bad, as in restraint of trade: That no member should sell the barrel of any hand gun, &c., ready proved, to any person of the trade not a member in London, or within four miles thereof. *The Master, &c., of Gunmakers, &c.*, v. *Fell*, Willes. 384. No member should strike his stamp or mark on the barrel of any person not a member of the Company, &c., *Ib.* That every person not being already free of the city, occupying, using or exercising, or who shall occupy, use or exercise the art, trade or mystery of a butcher within the said city or its liberties, shall take upon himself the freedom of the Company of Butchers, and that if any person or persons (except such as are already free, &c.) shall use the trade of a butcher, not being free of this Company, he shall pay, &c. *Harrison* v. *Godman*, 1 Burr. 12. So as "to persons using the occupation of music and dancing." *Robinson* v. *Groscourt*, 5 Mod. 104. That no person should erect any booth, for the purpose of any show or public entertainment, in any public place within the borough, without license from the mayor, which license should not be given at or for any other time than during the annual fairs, if three inhabitant householders, residing within 100 yards of the place intended to be used, should have previously memorialized the mayor to withhold such license, &c. *Elwood* v. *Bulloch*, 6 Q. B. 383. Where a particular building was designated for the slaughtering of all animals intended for sale or consumption in the city, the owners of which were granted the exclusive right, for a specified period, to have all such animals slaughtered at their establishment, the by-law was held bad. *Chicago* v. *Rumpff*, 45 Ill. 90. So where it was provided that "no person shall keep a slaughter house within the city without the special resolution of the council." *Re Nash and McCracken*, 33 U. C. Q. B. 181. Or that none but three persons appointed by the city should sweep for hire or gain any chimney or flue in the city. *Reg.* v. *Johnson*, 38 U. C. Q. B. 549. So by-laws requiring hucksters, without legislative authority, to pay a license fee: *Dunham* v. *Rochester*, 5 Cow. (N.Y.) 462; druggists to make returns under oath as to the quality and kinds of spirituous liquors sold by them: *Clinton* v. *Phillips*, 11 Am. 52; prohibiting the use of canals on Sundays: *The Calder and Hebble Navigation Co.* v. *Pilling*, 14 M. & W. 76; prohibiting licensed tavern keepers from having a light in their bars: *Reg.* v. *Belmont*, 35 U. C. Q. B. 298; requiring the owners of theatres to pay the city constable a certain sum: *Waters* v. *Leech*, 3 Ark. 110; requiring a railroad company to keep a flagman by day and a red lantern by night at a point where its track crossed a street; *Toledo, Wabash, and Western R. W. Co.* v. *Jacksonville*, 16 Am. 611; authorizing the arrest of free negroes in the street after ten o'clock at night: *Mayor, &c., of Memphis* v. *Winfield*, 8 Hump. (Tenn.) 707.

(*g*) Taxes must be general. A tax levied on a particular occupation is therefore bad. *Savannah* v. *Hartridge*, 8 Ga. 23; *Linning* v.

exercising the same, (*h*) unless authorized or required by statute so to do; (*i*) but the council may direct a fee, not exceeding $1, to be paid to the proper officer for a certificate of compliance with any regulations in regard to such trade or calling. 46 V. c. 18, s. 287. Proviso.

287. A council may grant exclusive privileges in any ferry which may be vested in the corporation (*k*) represented by Privileges of ferry.

Charleston, 1 McCord (S. Car.) 345. A regulation "that any person wishing to sell fresh meat in quantities less than a quarter in a shop or stall, in Coleman or in Baldwin Wards, shall, before the first of March in each year, apply, in writing, to the chairman of the market committee, stating the annual sum he or she will pay in addition to the sum of $40 to obtain a certificate from the proper authority, authorizing the holder of the certificate to expose for sale and sell fresh meat in one stall in Coleman Ward, or in Baldwin Ward, for one year, from first of March of the year in which the certificate is obtained," is bad. *In re Snell and Belleville*, 30 U. C. Q. B. 93.

(*h*) The power to license carries with it the right to require payment of a reasonable sum as a consideration for the license, but such power must not be so used as to be the imposition of a tax. *State* v. *Herod*, 29 Iowa 123. The difficulty is to draw the line. "We cannot assent to the position that if the sum required for a license exceeds the expense of issuing it, the Act transcends the licensing power and imposes a tax." By such a theory the statute would be shorn of all its efficiency. *Per* Paine, J., in *Tenny* v. *Lenz*, 16 Wis. 566; see also, *Carter* v. *Dow*, *Ib.* 298; *Fire Department* v. *Helfenstein*, *Ib.* 136; *Ash* v. *People*, 11 Mich. 347; *Chilvers* v. *People*, *Ib.* 43. By-laws requiring a license fee so heavy as to amount to a prohibition are to be considered in restraint of trade. *Mobile* v. *Yuille*, 3 Ala. 137. But see *City of Montreal* v. *Walker*, M. L. R. 1 Q. B. 469.

(*i*) The import of these words deserves special attention. The meaning is, that in the absence of some statute authorizing or requiring the council to confer an exclusive right on any person to exercise a trade or calling or to impose a special tax on any such person, or to require a license to be taken for the exercise of the same, the council shall not have power to create a monopoly by doing any of the things mentioned. If there be such a statute it must be plain in its terms, and direct in its language. See note *f* to this section.

(*k*) A ferry is a franchise which cannot be set up without the license of the Crown, or the authority of some body corporate or person empowered by the Crown or the Legislature to grant the same. Com. Dig. "Piscary." B. It is the exclusive privilege to carry passengers across a river, lake or arm of the sea, from one village to another, or to connect a continuous line of road leading from one township or village to another. *Newton* v. *Cubitt*, 12 C. B. N. S. 32. Where the Legislature has conferred upon a municipal corporation its whole power to establish and regulate ferries within the corporate limits, then and then only can the corporation grant exclusive privileges of ferry. *East Hartford* v. *Hartford Bridge Co.*, 10 How. (U. S.) 511. The exclusive power must appear by express words or

Exception as to certain ferries.

such council, (*l*) other than a ferry between a Province of the Dominion of Canada and any British or foreign country, or between two Provinces of the Dominion. (*m*) 46 V. c. 18, s. 288. *See* B. N. A. Act, 1867, s. 91 (13); Rev. Stat., Cap. 117; and sec. 495 (4), *post.*

TITLE II.—RESPECTING BY-LAWS.

Div. I.—Authentication of By-laws.
Div. II.—Objections by Ratepayers.
Div. III.—Voting on by Electors.
Div. IV.—Confirmation of By-laws.
Div. V.—Quashing By-laws.
Div. VI.—By-laws creating Debts.
Div. VII.—By-laws respecting Yearly Rates.
Div. VIII.—Anticipatory Appropriations.

Division I.—Authentication of By-laws.

Original. *Sec.* 288.
Evidence of. *Sec.* 289.
Proof of facts for Lieutenant-Governor. *Sec.* 290.

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necessary inference. Mere power to establish and regulate ferries within the corporate limits would not, it seems, be sufficient to enable the corporation to confer on others an exclusive right of ferry. *Harrison* v. *State*, 9 Mo. 526; *Minturn* v. *Larue*, 23 How. (U. S.) 435; *McEwan* v. *Taylor*, 4 G. Greene (Iowa) 532. A license by the Crown to the town of Belleville giving the right to ferry "between the town of Belleville to Ameliasburg" was held a sufficient grant of a right of ferriage to and from the two places named. *Anderson* v. *Jellet*, 9 S. C. R. 1. The grant by the legislature is, in the interest of the public, one which may if necessary be repealed or altered. *East Hartford* v. *Hartford Bridge Co.*, 10 How. (U. S.) 511. See also *Charles River Bridge* v. *Warren Bridge*, 11 Pet. (U. S.) 420; *Hartford Bridge Co.* v. *Ferry Co.*, 29 Conn. 210; *Kerby* v. *Lewis*, 6 O. S. 207; *Reg.* v. *Davenport*, 16 U. C. Q. B. 411. As to the right of a municipal corporation in the public interest to derogate from its own grant of a ferry, and other points as to the right of municipal corporations as to ferries. See Dillon on Municidal Corporations, 3rd ed., s. 116. As to power to license and regulate ferries, see secs. 495 (4,) 521 (11.) As to the responsibility of ferrymen, see *Walker* v. *Jackson*, 10 M. & W. 161; *Willoughby* v. *Horridge*, 12 C. B. 742; *Fisher* v. *Clisbee*, 12 Ill. 344; *Wilson* v. *Hamilton*, 4 Ohio St. 722; *White* v. *Winnisnomet Co.*, 7 Cush. (Mass.) 155; *Le Barron* v. *East Boston Ferry Co.*, 11 Allen (Mass.) 312; *Harvey* v. *Rose*, 7 Am. 595; *Wyckoff* v. *Queen's County Ferry Co.*, 11 Am. 650.

(*l*) See note *i* to sec. 8.

(*m*) Ferries between a Province and any British or foreign country, or between two Provinces, are subject to the exclusive legisla-

288 Every by-law shall be under the seal of the corporation, and shall be signed by the head of the corporation, or by the person presiding at the meeting at which the by-law has been passed, and by the clerk of the corporation. (*a*) 46 V. c. 18, s. 289. How by-laws to be authenticated.

289. A copy of any by-law, written or printed, without erasure or interlineation, and under the seal of the corporation, and certified to be a true copy by the clerk, and by any member of the council, shall be deemed authentic, and be received in evidence in any Court of justice without proof of the seal or signatures, unless it is specially pleaded or alleged that the seal or one or both of the signatures have been forged. (*b*) 46 V. c. 18, s. 290. Evidence of.

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tive authority of the Parliament of Canada. B. N. A. Act. s. 91 sub-s. 13.

(*a*) The formalities prescribed in this section are indispensable. Unless the by-law be sealed it is not a legal by-law. *In re Croft and Brooke*, 17 U. C. Q. B. 269. See also *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 74. A municipality may be estopped from denying the validity of a by-law which through inadvertance was not signed or sealed. *Reg.* v. *Perth*, 6 O. R. 195. But where no seal was affixed but an impression of the seal was made thereon, held sufficient. *Croome* v. *Brantford*, 6 O. R. 188. Signature would seem to be as essential as seal. See *Blanchard* v. *Bissell*, 11 Ohio St. 95. See also *Canada Atlantic R. W. Co.* v. *Ottawa*, 12 S. C. R. p. 379. Where the head of the corporation, either from caprice or obstinacy, refuses to do his duty in passing a by-law which is required for the benefit of his township or a part of it, it would seem that the remaining members of the council would be justified in requiring another member of the council to take the chair, and do that which the head of the council perversely refuses to do. *Preston and Manvers*, 21 U. C. Q. B. 626. See further *Brock* v. *Toronto and Nipissing R. W. Co.*, 17 Grant 425. No action can be sustained, as for a breach of duty, against the head of a municipal corporation for not affixing the seal to make a contract between the corporation and the plaintiff, founded upon a refusal, which, if there had been a previous contract, would have constituted a breach of it. There cannot be a remedy against the head of the corpo ation equivalent to a remedy on the contract against the corporation itself, had the contract been duly made, so as to make a valid contract where there is none. *Fair* v. *Moore*, 3 U. C. C. P. 484. See further note *e* to sec. 332. By-laws of police commissioners need not be sealed. See sec. 437.

(*b*) In the absence of some provision of this kind, it would in general be necessary, in order to prove a by-law, to produce and prove the original by-law. See *Re Thetford*, 12 Vin. Abr. 90; *Lumbard* v. *Aldrich*, 8 N. H. 31; *Stevens* v. *Chicago*, 48 Ill. 498; *Moor* v. *Newfield*, 4 Greenl. (Me.) 44. On a motion to quash a by-law, order, or resolution, it is only necessary to produce a copy, certified under the hand of the clerk alone, and under the corporate seal, together with an affidavit of the party applying, that the copy was

By-laws requiring assent of the Lieut.-Gov.

290. The facts required by this Act to be recited in any by-law which requires the approval of the Lieutenant-Governor in Council, shall, before receiving such approval, be verified by solemn declaration, by the head of the council, and by the treasurer and clerk thereof, and by such other person and on such other evidence as to the Lieutenant-Governor in Council satisfactorily proves the facts so recited; or in case of the death or absence of such municipal officer, upon the declaration of any other member of the council, whose declaration the Lieutenant-Governor in Council may accept. (*c*) 46 V. c. 18, s. 291.

DIVISION II.—OBJECTIONS BY RATEPAYERS.

When and how made. *Sec.* 291.
When council shall act on objections. *Sec.* 292.

Opposition to by-laws.

291. In case a person rated on the assessment roll of a municipality, or of any locality therein, objects to the passing of a by-law, the passing of which is to be preceded by the application of a certain number of the ratable inhabitants of such municipality or place, he shall, on petitioning the council, be at liberty to attend in person, or by counsel or solicitor, before the council at the time at which the by-law is intended to be considered, or before a committee of the council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the by-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements, and that the proposed by-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the by-law. (*d*) 46 V. c. 18, s. 292.

How to be made.

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received from the Clerk. See 332. The latter section is framed for a special purpose, while this section is meant to provide generally for all cases. *Per* Draper, C. J., *In re Board of School Trustees and Sandwich*, 23 U. C. Q. B. 639.

(*c*) This section applies only to by-laws requiring "the approval of the Lieutenant-Governor in Council." Such as are mentioned in secs. 367, 370.

(*d*) The right to object does not extend to the passing of *all* by-laws, but only such as are "to be preceded by the application of a certain number of the ratable inhabitants of the municipality or

When by-laws shall not pass.

292. If the council is satisfied upon the evidence that the application for the by-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the by-law passed, or if the council is satisfied that the notice required by law was not duly given, the council shall not pass the by-law. (*e*) 46 V. c. 18, s. 293.

DIVISION III.—VOTING ON BY ELECTORS.

Proceedings preliminary to the Poll. *Secs.* 293-304.
The Poll. *Secs.* 305-319.
Who to Vote. *Secs.* 308, 309.
Freeholders. *Sec.* 308.
Leaseholders. *Sec.* 309.
Oath of Freeholder. *Sec.* 310.
Oath of Leaseholder. *Secs.* 311, 312.
Proceedings after close of Poll. *Secs.* 313-319.
Requisites of certain bonus By-laws. *Sec.* 320.
Secrecy of Proceedings. *Secs.* 321, 322.
Scrutiny. *Secs.* 323-326.
Passing By-laws by Council. *Secs.* 327, 328.

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place." The right to attend for the purpose mentioned exists only "on petitioning the council." Where the application was to quash a drainage by-law, Gwynne, J., said, "We are not prepared to say, that if a municipal council, in violation of the apparent fact that a sufficient number to put the council in motion had not petitioned, such fact being made apparent in the manner indicated in sections 194 and 195 (same as 291 and 292 of this Act) should nevertheless proceed to pass a by-law imposing rates, that such a by-law could be sustained upon a motion, showing these facts, made to quash it. But in the absence of all suggestion of fraud and all opposition to the by-law when before the council, upon the ground taken, I think that a by-law which recites that a sufficient number had petitioned should be taken to be true, unless, at least, the recital be clearly established to be glaringly untrue, so as to afford a presumption of fraud in the proceedings of the council." *In re Montgomery and Raleigh*, 21 U. C. C. P. 394. See further the following note.

(*e*) The by-law should in every case be passed subsequently to and consequent upon the presentation of the required petition praying the particular by-law to be passed, and after the fullest opportunity given to every ratepayer to be affected by the by-law to object to its being passed. *Per* Gwynne, J., *In re Morrell and Toronto*, 22 U. C. C. P. 326.

If a by-law requires the assent of the electors, mode of obtaining same.

293. In case a by-law requires the assent of the electors of a municipality before the final passing thereof, (*f*) the following proceedings shall be taken for ascertaining such assent, (*g*) except in cases otherwise provided for:

Time and place of voting to be fixed by the by-law.

1. The council shall by the by-law fix the day and hour for taking the votes of the electors, and such places in the municipality as the council shall in their discretion deem best for the purpose, and where the votes are to be taken at more than one place, shall name a deputy-returning officer to take the votes at every such place; (*h*) and the day so fixed for taking the votes shall not be less than three, nor more than five weeks after the first publication of the proposed by-law. (*i*)

Publication of by-law.

2. The council shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper published either within the municipality or in the county town, or in a public newspaper published in an adjoining local municipality, as the council may designate by resolution, and the publication shall for the purpose aforesaid be continued in at least one number of such paper each week

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(*f*) By-laws for creating debts not payable in the same municipal year are hereby notably intended. See sec. 340 and notes thereon.

(*g*) If the proceedings prescribed be not taken, or be not duly taken, the by-law may be held invalid. See *Barnett* v. *Newark*, 28 Ill. 62; *Higley* v. *Bunce*, 10 Conn. 567; *Conboy* v. *Iowa*, 2 Iowa 90; *Canada Atlantic R. W. Co.* v. *Ottawa*, 12 S. C. R. 365. See also sec. 333 at the end. Where the by-law if approved would be illegal the proceedings may be restrained. *Helm* v. *Port Hope* 22 Grant 273; *Wallace* v. *Orangeville*, 5 O. R. 37. As to the power, without legislative authority, to take a vote upon a matter over which, without the electoral assent, the council has complete jurisdiction, see *Davis* v. *Toronto*, 15 O. R. 33.

(*h*) When the manner of ascertaining the assent of the electors was prescribed by a notice attached to the proposed by-law when published it was held sufficient, though the Act says that it shall be determined by the by-law. *Boulton* v. *Peterborough*, 16 U. C. Q. B. 380. The omission in the by-law as finally passed of the clause providing for the time of voting and the places where the votes are to be taken, would not render the by-law invalid. *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 201.

(*i*) Where publication was required for four consecutive weeks, in some newspaper published weekly or oftener in the municipality, with a notice that, on some day within the week next after such four weeks, a poll would be demanded, and the first publication was on Thursday, 12th January, and Tuesday, 7th February, was appointed for the polling, it was held too soon. *Coe* v. *Pickering*, 24 U. C. Q. B.

for three successive weeks, (*j*) and the council shall put up a copy of the by-law at four or more of the most public places in the municipality. 46 V. c. 18, s. 294, (1, 2).

439; *In re Miles and Richmond*, 28 U. C. Q. B. 333. Where it was required that the by-law should be published for the space of twenty days, in at least one newspaper, before it should go into effect, it was held that the by-law would go into effect twenty days after its first publication. *Hoboken* v. *Gear*, 3 Dutch (N. J.) 265.

(*j*) The municipality of Kingston proposed to take £7,500 in a road company, and published a by-law (No. 6) to authorize a loan, containing the usual recitals, imposing a rate, and directing the issue of debentures, &c. When the by-law came on for discussion, a clause was added reducing the sum to £5,000, and directing the rates to be altered accordingly, and, thus amended, it passed in June, 1854. In December following another by-law was passed (No. 8), providing for the issuing of debentures (authorized by No. 6), and directing a rate to be levied for the payment of the interest thereon, but making distinct provisions for meeting the principal out of the profits of the stock to be taken, and from other funds. This by-law did not repeal No. 6, but the enactments in it showed clearly that the rates imposed by that by-law were meant to be dispensed with. *Held*, that the last mentioned by-law was bad, for it was a new and independent by-law and not a mere supplement to No. 6, and should, therefore, have been published before the passing, and have contained the usual recitals and enactments required in by-laws for creating a loan. *Held*, also, that by-law No. 6 was bad, though not moved against, for it was not published beforehand in the form in which it ultimately passed. *In re Bryant and Pittsburg*, 13 U. C. Q. B. 347; but see *per* Spragge, C., in *Brock* v. *Toronto and Nipissing R. Co.*, 17 Grant 433. Where the statute required publication in each newspaper published in the municipality, an omission to publish it in one of the local newspapers was held to avoid the by-law. *Simpson* v. *Lincoln*, 13 U. C. C. P. 48. Where the statute simply required the by-law to be promulgated, it was held sufficient to publish it in the newspaper in which the by-laws of the city were usually published. *City Council* v. *Truchelut*, 1 Nott. & McC. (South Car.) 227. It is not necessary that the by-law should be, before publication, signed and sealed, as required by sec. 288. The word "by-law" is used in the statute not merely to designate an instrument containing all that is stated in sec 288, but the same instrument while still in the hands of the council and under consideration. *Paffard and Lincoln*, 24 U. C. Q. B. 16. Where the statute provided for alternate modes of publication, and empowered the corporation to determine which mode should be adopted, it was held that publication in the mode directed by the clerk, without the intervention of the corporation, was insufficient. *Higly* v. *Bunce*, 10 Conn. 436; *Ib.* 567. It is not, of course, for the court, on application, summarily to set aside a by-law for defective publication. In such a case the court will exercise its discretion, and set aside or refuse to set aside the by-law, according to circumstances. *Boulton and Peterborough*, 16 U. C. Q. B. 380; *In re Gibson* v. *Bruce*, 20 U. C. Q. B. 398.

Notice.

3. Appended to the copy so published and posted shall be a notice (*k*) signed by the clerk of the council, stating that the copy is a true copy of a proposed by-law which has been taken into consideration, and which will be finally passed by the council in the event of the assent of the electors being obtained thereto, after one (*l*) month from the first publication in the newspaper, stating the date of the first publication, and that at the hour, day and place or places therein fixed for taking the votes of the electors, the polls will be held. 49 V. c. 37, s. 25.

Ballot papers to be printed.

294. Forthwith (*m*) after the day has been fixed as aforesaid, for taking the votes of electors, with respect to the by-law the clerk of the municipal council which proposed the by-law shall cause to be printed, at the expense of the municipality, such a number of ballot papers as will be sufficient for the purposes of the voting. (*n*) 46 V. c. 18, s. 295.

Form of.

295. The ballot papers shall be according to the form of Schedule J. to this Act. (*o*) 46 V. c. 18, s. 296.

Council to fix a day for appointment of persons to attend at polling places, and

296. The council shall by the by-law fix a time when, and a place where the clerk of the council which proposed the by-law shall sum up the number of votes given for and against the by-law, and a time and place for the appointment

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(*k*) The notice may be in this form:

Take notice, that the above is a true copy of a proposed by-law, which has been taken into consideration, and which will be finally passed by the council of the municipality in the event of the assent of the electors being obtained thereto after one month from the first publication in the (*naming the newspaper*), the date of which first publication was (*stating the day of the week, month and year*), and that the votes of the electors of the said municipality will be taken thereon at (*naming the place or places*), on (*naming the day and date*), at (*naming the hour.*)

D. C., *Clerk.*

(*l*) It is not a fatal objection that a by-law was passed a few days less than a month after its first publication if it was passed after it was assented to by the electors. *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 201.

(*m*) See note *q* to sec. 181.

(*n*) The system of ballot already applied to ordinary elections is now to be applied to the passing of by-laws, which is also a mode of election. See *In re Johnson and Lambton*, 40 U. C. Q. B. 297. See sec. 121 *et seq.*

(*o*) See note *l* to sec. 121.

of persons to attend at the various polling places, and at the final summing up of the votes by the clerk respectively, on behalf of the persons interested in, and promoting or opposing the passage of the by-law respectively. (*p*) 46 V. c. 18, s. 297. for summing up votes.

297. At the time and place named the head of the municipality shall appoint, in writing signed by him, two persons to attend at the final summing up of the votes, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of the by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of the by-law. (*q*) 46 V. c. 18, s. 298. Selection of agents.

298. Before any person is so appointed he shall make and subscribe before the head of the municipality a declaration in the form of Schedule K to this Act, that he is interested in and desirous of promoting or opposing (as the case may be) the passing of the by-law. 46 V. c. 18, s. 299. Agent to make declaration.

299. Every person so appointed, before being admitted to the polling place or the summing up of the votes, as the case may be, shall produce to the deputy-returning officer or clerk of the municipality, as the case may be, his written appointment. (*r*) 46 V. c. 18, s. 300. Admission of agents to polling place, etc.

300. In the absence of any person authorized as aforesaid to attend at a polling place, or at the final summing up of the votes, any elector in the same interest as the person so absent may, upon making and subscribing before the deputy-returning officer at the polling place or the clerk of the municipality a declaration in the form of Schedule K to this Act, be admitted to the polling place to act for the person so absent. (*s*) 46 V. c. 18, s. 301. Appointment in absence of agent.

(*p*) See sec. 156 *et seq.* and notes thereto.

(*q*) This is for the purpose of preventing all appearance of partiality, and if possible of satisfying all parties that there is no partiality or appearance of it. See sec. 152 and notes thereto. The mode of appointment deserves attention. It must not only be in writing but signed.

(*r*) The above note.

(*s*) The right to make an appointment under this section is dependent on the absence of the persons appointed under the previous sections. The appointment when necessary may be made of any elector "in the same interest as the person absent."

Exclusion from polling place.

301. During the time appointed for polling no person shall be entitled or permitted to be present in any polling place other than the officers, clerks and persons or electors authorized to attend as aforesaid at the polling place. (*t*) 46 V. c. 18, s. 302.

Deputy-returning officers, poll clerks, and agents may vote at polling place where they are employed,

302—(1). The clerk of the municipality, on the request of any elector entitled to vote at one of the polling places, who has been appointed deputy-returning officer or poll clerk, or who has been named as the person to attend at a polling place other than the one where he is entitled to vote, shall give to such elector a certificate that such deputy-returning officer, poll clerk or person is entitled to vote for or against the by-law at the polling place where such elector is stationed during the polling day, and the certificate shall also state the property or other qualification in respect to which he is entitled to vote. (*u*)

on certificate from the clerk of the municipality.

(2) On the production of the certificate, the deputy-returning officer, poll clerk or person shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling place of the ward or polling subdivision where he would otherwise have been entitled to vote; and the deputy-returning officer shall attach the certificate to the voters' list; but no such certificate shall entitle such elector to vote at such polling place unless he has been actually engaged as deputy-returning officer, poll clerk or person during the day of polling. (*v*)

Who to administer oath in such case.

(3) In case of a deputy-returning officer voting at the polling place at which he is appointed to act, the poll clerk, or in the absence of the poll clerk, any one authorized to be present at the polling place, may administer to the deputy-returning officer the oath required to be taken of voters qualified to vote on the by-law. (*w*) 46 V. c. 18, s. 303.

Who to conduct the poll in municipalities divided into wards

303. In the case of municipalities which are divided into wards or polling subdivisions, the clerk of the municipality shall, before the poll is opened, prepare and deliver to the deputy-returning officer for every ward or polling sub-

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(*t*) See note *l* to s. 151.

(*u*) See s. 141 and notes thereto.

(*v*) See s. 141 and notes thereto.

(*w*) See s. 141 and notes thereto.

division, a voters' list in the form of schedule C to this Act, containing the names, arranged alphabetically, of all persons appearing by the then last revised assessment roll to be entitled, under the provisions of sections 308 and 309 of this Act, to vote in that ward or polling subdivision, and shall attest the said list by his solemn declaration in writing under his hand. (*x*) 46 V. c. 18, s. 304.

In municipalities not divided into wards.

304. In the case of municipalities which are not divided into wards or polling subdivisions, the clerk shall provide himself with the necessary ballot papers, the materials for marking ballot papers, printed directions to voters, and a list of electors for the municipality similar to the list mentioned in the preceding section; and the clerk shall perform the like duties with respect to the whole municipality as are imposed upon a deputy-returning officer in respect of a ward or polling subdivision. (*a*) 46 V. c. 18, s. 305.

The Poll.

Voting to be by ballot.

305. At the day and hour fixed as aforesaid, a poll shall be held and the votes shall be taken by ballot. 46 V. c. 18, s. 306.

Proceedings to be as at municipal elections.

306. The proceedings at the poll, and for and incidental to the same, and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections, and all the provisions of sections 120 to 176 inclusive, of this Act, so far as the same are applicable, and except so far as is herein otherwise provided, shall apply to the taking of votes at the poll, and to all matters incidental thereto. (*b*) 46 V. c. 18, s. 307.

Form of directions for guidance to voters.

307. The printed directions to be delivered to the deputy returning officers shall be in the form of schedule L to this Act. (*c*) 46 V. c. 18, s. 308.

(*x*) See s. 132.

(*a*) See s. 136.

(*b*) The application of the sections named, not only to the taking of the poll, but "to all matters incidental thereto," is a very wide, but not too wide, application of them. The purpose being to secure secrecy in the vote, not only at the time of voting, but subsequent, the sections which prevent the inspection of ballot papers, except under the order of the court or a judge, and for the destruction of the ballot papers after a limited time, are necessarily embraced.

(*c*) The omission to deliver these directions would not necessarily

Freeholders who may vote on by-laws.

308.—(1) Every ratepayer, being a man, unmarried woman or widow, shall be entitled to vote on any by-law requiring the assent of the electors, who, at the time of tender of the vote, is of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty, (*d*) and who has neither directly nor indirectly received, nor is in expectation of receiving, any reward or gift for the vote which he tenders, (*e*) and who is at the time of the tender a freeholder, in his own right, or whose wife is a freeholder of real property within such municipality, of sufficient value to entitle him to vote at any municipal election, and is rated on the last revised assessment roll as such freeholder, provided such person is named or purported to be named in the voters' list of electors. (*f*)

In case of new municipality where there has been no assessment roll

(2) In case of a new municipality in which there has not been any assessment roll, the qualification of being named on the list and of being rated on the roll shall be dispensed with, but in such case the person offering to vote shall not be entitled to vote, unless he possesses the other qualifications above mentioned, and has, at the time of tender of his vote, sufficient property to have entitled him to vote if he had been rated for such property, and unless at such time he names such property to the deputy-returning officer; and the deputy-returning officer shall note such property in the voters' list opposite the voters' name, at the request of any one entitled to vote on such by-law. (*g*) 46 V. c. 18, ss. 309, 311.

Leaseholders who may vote on by-laws.

309.—(1) Every ratepayer shall be entitled to vote on any by law requiring the assent of the electors, who is a man, unmarried woman or widow, and at the time of tender of the vote is of the full age of twenty one years, and a natural born or naturalized subject of Her Majesty, and who has neither directly nor indirectly received, nor is in expectation

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avoid the election; but this does not exculpate the officers concerned for neglect of duty.

(*d*) See sec. 79 and notes thereto.

(*e*) See sec. 209 and notes thereto.

(*f*) See note *d* to sec. 79.

(*g*) The general rule is to require both the possession of property and the rating of it on the roll; but the latter requirement presupposes the existence of a roll. In the case of a new municipality during the first year there can be no roll. In such case the possession of the property qualification is sufficient.

of receiving, any reward or gift for the vote which he tenders and is resident within the municipality for which the vote is taken for one month next before the vote, and who is, or whose wife is, a leaseholder of real property within the municipality, of sufficient value to entitle him to vote at a municipal election, and who is rated on the last revised assessment roll therefor, and which lease extends for the period of time within which the debt to be contracted or the money to be raised by the by-law is made payable; in which lease the lessee has covenanted to pay all municipal taxes in respect of the property leased, and which person is named, or purported to be named, in the voters' list. (*h*)

Leaseholders who may vote on local improvement by-laws.

(2) The said provisions as to the lease extending for the period of time within which the debt to be contracted or the money to be raised by such by-law is made payable, shall not apply to a by-law respecting local improvements, under section 625 of this Act.

In case of new municipality where there has been no assessment roll.

(3) In case of a new municipality in which there has not been any assessment roll, the qualification of being named on the list and of being rated on the roll, and of residence for one month, shall be dispensed with, but in such case the person offering to vote shall not be entitled to vote unless possessing the other qualifications above mentioned, and unless he is at the time of tender of his vote a resident of the municipality, and then has sufficient property to have entitled him to vote if he had been rated for such property, and unless at such time he names the property to the deputy-returning officer; and the deputy-returning officer shall note the property in the voters' list, opposite the voter's name, at the request of any one entitled to vote on such by-law. (*i*) 46 V. c. 18, ss. 310, 311.

Oath of freeholder voting on by-law.

310. Any ratepayer offering to vote in respect of a freehold on such by-law, may be required by the deputy-returning officer or any ratepayer entitled to vote on such by-law, to make the following oath or affirmation, or

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(*h*) The voters under a by-law are not in all cases the same as ordinary electors. By-laws creating debts, not payable in the same municipal year, usually provide for the payment of the debt in a term of years mentioned in the by-law. Leaseholders whose leases are for a less term than the term mentioned in the by-law, or in which the lessee is not bound to pay municipal taxes, have no right to vote. See *Erwin and Townsend*, 21 U. C. C. P. 330. An exception is made in certain cases by sub-sec. 2.

(*i*) See note *g* to the preceding section.

any part thereof, or to the effect thereof, before his vote is recorded:—(*j*)

You swear that you are of the full age of 21 years, and a natural born (*or* naturalized) subject of Her Majesty;

That you are a freeholder in your own right (*or* your wife is a freeholder), within the municipality for which this vote is taken;

That you have not voted before on the by-law in this township (*or* ward, *as the case may be*);

That you are, according to law, entitled to vote on the said by-law;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

That you are the person named, or purporting to be named, in the voters' list of electors;

(In the case of an unmarried woman or widow claiming to vote). That you are unmarried (*or* a widow *as the case may be*);

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting;

(In case of a new municipality in which there has not been any assessment roll, then instead of referring to being named in the voters' list, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote);

And no inquiries shall be made of any voter except with respect to the facts specified in such oath or affirmation. 46 V. c. 18, s. 312.

Oath of leaseholder voting on by-law, other than one respecting local improvements under section 625.

311. Any ratepayer offering to vote in respect of a leasehold on such by-law, other than a by-law respecting local improvements under section 625, may be required by the deputy-returning officer, or any ratepayer entitled to vote on such by-law, to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded:—(*jj*)

You swear that you are of the full age of 21 years, and a natural born or naturalized subject of Her Majesty;

That you have been a resident within the municipality for which this vote is taken for one month next before the vote;

That you are (*or* your wife is) a leaseholder within this municipality and the lease extends for the period of time within which the debtto

(*j*) See sec. 102 and notes thereto.

(*jj*) See sec. 103 and notes thereto.

be contracted or the money to be raised by the by-law now submitted to the ratepayers is made payable, and that you have (*or* the lessee in said lease has) covenanted in such lease to pay all municipal taxes;

That you have not before voted on the by-law in this township (*or* ward, *as the case may be*);

That you are, according to law, entitled to vote on the said by-law;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender;

That you are the person named, or purporting to be named, in the voters' list;

(In the case of an unmarried woman or widow claiming to vote). That you are unmarried (*or* a widow *as the case may be*);

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting;

(In case of a new municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the vote, and of referring to being named in the voters' list, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality);

And no inquiries shall be made of a voter, except with respect to the facts specified in the oath or affirmation. 46 V. c. 18, s. 313.

Oath of leaseholder voting on by-law respecting local improvements under section 625.

312. A ratepaper offering to vote in respect of a leasehold, on a by-law respecting local improvements, under section 625, may be required by the deputy-returning officer, or any ratepayer entitled to vote on the by-law, to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded:

You swear that you are of the full age of 21 years, and a natural born (*or* naturalized) subject of Her Majesty:

That you have been a resident within the municipality for which this vote is taken, for one month next before the vote;

That you are (*or* your wife is) a leaseholder within this municipality, and that you have (*or* the lessee in said lease has) covenanted in such lease to pay all municipal taxes;

That you have not before voted on the by-law in this township (*or* ward, *as the case may be*);

That you are, according to law, entitled to vote on the said by-law;

That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender :

That you are the person named, or purporting to be named, in the voters' list ;

(In the case of an unmarried woman or widow claiming to vote). That you are unmarried (*or* a widow *as the case may be*) ;

That you have not received anything, nor has anything been promised to you directly or indirectly, either to induce you to vote on this by-law, or for loss of time, travelling expenses, hire of team, or any other service connected therewith ;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or refrain from voting ;

(*In case of a new municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the vote, and of referring to being named in the voter's list, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote, and that he is a resident of such municipality*) ;

And no inquiries shall be made of a voter, except with respect to the facts specified in the oath or affirmation. 46 V. c. 18, s. 314.

Form of statement to be made by deputy-returning officers of result of the polling.

313. The written statement to be made by every deputy-returning officer at the close of the polling shall be made under the following heads : (*k*)

(*a*) Name or number of ward or polling subdivision, and of the municipality, and the date of the polling;

(*b*) Number of votes for and against the by-law ;

(*c*) Rejected ballot papers. 46 V. c. 18, s. 315.

Objections to ballot papers.

To be numbered.

314. The deputy-returning officer shall take a note of any objection made by any person authorized to be present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection. Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by he deputy-returning officer. (*l*). 46 V. c. 18, s. 316.

Deputy-returning officer's duties after votes are counted.

315. Every deputy-returning officer, at the completion of the counting of votes after the close of the poll, shall, in the presence of the persons authorized to attend, make up into

(*k*) See sec. 152 (5) and notes thereto.

(*l*) See sec. 152 (2, 3) and notes thereto.

separate packets, sealed with his own seal, and the seals of such persons authorized to attend as desire to affix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the polling, the name of the deputy-returning officer, and of the ward or polling subdivision and municipality—(*m*)

(*a*) The statement of votes given for and against the by-law and of the rejected ballot papers;

(*b*) The used ballot papers which have not been objected to and have been counted;

(*c*) The ballot papers which have been objected to, but which have been counted by the deputy-returning officer;

(*d*) The rejected ballot papers;

(*e*) The spoiled ballot papers;

(*f*) The unused ballot papers;

(*g*) The voters' list, with the oath in the form of Schedule G annexed thereto; a statement of the number of voters whose votes are marked by the deputy-returning officer, under the heads "Physical incapacity" and "Unable to read," with the declarations of inability; and the notes taken of objections made to ballot papers found in the ballot box. 46 V. c. 18, s. 317.

Certificate and declaration of deputy-returning officer and return of voters' list and of ballot box.

316. Every deputy-returning officer shall, at the close of the poll, certify under his signature on the voters' list in full words the total number of persons who have voted at the polling place at which he has been appointed to preside, and shall before placing the voters' list in its proper packet as aforesaid, make and subscribe before the clerk of the municipality, a justice of the peace or the poll clerk, his solemn declaration that the voters' list was used in the manner prescribed by law, and that the entries required by law to be made therein were correctly made; which declaration shall be in the form of Schedule G to this Act, and shall thereafter be annexed to the voters' list: he shall also forthwith return the ballot box to the clerk of the municipality. (*n*) 46 V. c. 18, s. 318.

(*m*) See sec. 155 (1) and notes thereto.

(*n*) See sec. 155 and notes thereto.

Deputy-returning officer to certify as to number of votes and rejected ballot papers.

317. Every deputy-returning officer, upon being requested so to do, shall deliver to the persons authorized to attend at his polling place a certificate of the number of votes given at the polling place for and against the by-law, and of the number of rejected ballot papers. (*o*) 46 V. c. 18, s. 319.

Clerk to cast up votes and declare result.

318. The clerk, after he has received the ballot papers and statements before mentioned of the number of votes given in each polling place, shall, at the time and place appointed by the by-law, in the presence of the persons authorized to attend or such of them as may be present, without opening any of the sealed packets of ballot papers, sum up from such statements the number of votes for and against the by-law, and shall then and there declare the result, (*p*) and forthwith certify to the council under his hand whether the majority of the electors voting upon the by-law have approved or disapproved of the by-law. (*q*) 46 V. c. 18, s. 320.

Clerk not to have casting vote as to certain by-laws.

319. Where the assent of the electors, or of the ratepayers, or a proportion of them, is necessary to the validity of a by-law, the clerk or other officer shall not be entitled to give a casting vote. 46 V. c. 18, s. 321.

Requisites to validity of certain bonus by-laws.

320.—(1) To render valid a by-law of a municipality for granting a bonus in aid of a railway or for promoting any manufacture, or for taking stock in a railway company, or for lending money to such company, or for guaranteeing the payment of money borrowed by such company, or for lending money to any other company or person on condition of such company or person establishing or continuing a manufactory in or near such municipality, the assent shall be necessary of two-fifths (*r*) of all ratepayers who were entitled to vote, as well as of a majority of the ratepayers voting on the by-law.

(2) In such case, in addition to the certificate required by

(*o*) See sec. 154.

(*p*) See sec. 156 and notes thereto.

(*q*) The majority required is that of the electors voting on the by-law, and not a majority of all the electors in the municipality. See *In re Jenkins and Elgin*, 21 U. C. C. P. 325; See further, *People* v. *Morris*, 13 Wend. (N.Y.) 325; but see also in *In re Billings and Gloucester*, 10 U. C. Q. B. 273; *In re McAvoy and Sarnia*, 12 U. C. Q. B. 102, but certain by-laws require the assent of a certain proportion of the ratepayers entitled to vote as well as of the majority of the ratepayers voting. See secs. 320, 320 (*a*).

(*r*) As to aid to manufacturers see next section.

section 318 of this Act, the clerk, in case of the majority of votes being in favour of the by-law, shall further certify whether or not, as far as shewn by the voters' list and assessment roll, such majority appears to be two-fifths of all the voters who were entitled to vote on the by-law.

(3) In case of dispute as to the result of the vote, the Judge shall have the same powers for determining the question as he has in any case of a scrutiny of the votes.

(4) The petition to the Judge may be by any elector, or by the council; and the proceedings for obtaining the Judge's decision shall be the same, as nearly as may be, as in the case of a scrutiny. 46 V. c. 18, s. 322.

Aid to manufacturers.

320 (*a*)—(1) Notwithstanding anything contained in the preceding section of this Act the vote of two-thirds in the affirmative of the ratepayers who are entitled to vote upon any by-law granting aid to or for promoting the establishment of a manufactory or manufacturing establishments, or for lending money to such company, person or establishment, or guaranteeing the payment of money borrowed in any municipality, shall be necessary in order to the carrying of the by-law, and the words "two-fifths," where they appear in the said preceding section shall not apply to the passage of such by-law, and for the purposes hereof the said section shall be read as if the words "two-thirds" instead of "two-fifths" were inserted therein.

(2) No municipality shall grant a bonus to a manufacturer under this section who proposes to establish an industry of a similar nature to one already established in such municipality without any such bonus.

(3) No bonus shall be granted by a municipality to secure the removal thereto of an industry already established elsewhere in the Province.

(4) No municipality shall grant a bonus in aid of any manufacturing industry, where the granting of such bonus would, for its payment, together with the payment of similar bonuses already granted by said municipality, require an annual levy for principal and interest, exceeding ten per cent. of the total annual municipal taxation thereof.

(5) This section shall not apply to the districts of Muskoka, Parry Sound, Algoma East and Algoma West, nor to any of the municipalities therein, nor shall it affect any by-law

heretofore adopted or passed, the vote taken thereon or the bonds or debentures issued or to be issued in pursuance thereof. (*s*) 51 V. c. 28, s. 16.

Secrecy of Proceedings.

Maintaining secrecy of proceedings at polling.

321.—(1) Every officer, clerk and person in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place. (*t*)

Voter not to be interfered with.

(2) No officer, clerk or other person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the manner in which any voter at such polling place is about to vote or has voted.

No information to be given as to how any one voted.

(3) No officer, clerk, or other person shall communicate at any time to any person any information obtained at a polling place as to the manner in which any voter at such polling place is about to vote or has voted.

Secrecy to be maintained at counting.

(4) Every officer, clerk and person in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate or attempt to communicate any information obtained at such counting as to the manner in which any vote is given in any particular ballot paper.

Voters not to be induced to disclose votes.

(5) No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the manner in which he has marked his vote.

Penalty for contravening this section.

(6) Every person who acts in contravention of this section shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. 46 V. c. 18, s. 323.

Statutory declaration of secrecy to be made by officers, etc., before a poll.

322. The clerk of the municipality, and every officer, clerk or person authorized to attend a polling place, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the clerk of the municipality, of a Justice of the Peace,

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(*s*) This section came into force on 1st November, 1888. See 51 V. c. 28, s. 1.

(*t*) See sec. 169 and notes thereto.

and if he is any other officer, or a clerk, or an agent, in the presence of a Justice of the Peace or the clerk of the municipality or a deputy-returning officer; and such statutory declaration of secrecy shall be in the form given in Schedule M to this Act, or to the like effect. 46 V. c. 18, s. 324.

Scrutiny.

Scrutiny may be had on application to County Judge.

323. If within two weeks after the clerk of the council which proposed the by-law has declared the result of the voting, (*a*) any elector applies upon petition to the County Judge, after giving such notice of the application and to such persons as the Judge directs, and shews by affidavit to the Judge reasonable grounds for entering into a scrutiny of the ballot papers, (*b*) and the petitioner enters into a recognizance before the Judge in the sum of $100, with two sureties (to be allowed as sufficient by the Judge upon affidavit of justification) (*c*) in the sum of $50 each conditioned to prosecute the petition with effect, and to pay the party against whom the same is brought any costs which may be adjudged to him against the petitioner, (*d*) the Judge may appoint a day and place within the municipality for entering into the scrutiny. (*e*) 46 V. c. 18, s. 325.

Notice of time of scrutiny.

324. At least one week's notice of the day appointed for the scrutiny shall be given by the petitioner to such persons as the Judge directs, and to the clerk of the municipality. (*f*) 46 V. c. 18, s. 326.

Proceedings.

325. On the day and at the hour appointed, the clerk shall attend before the Judge with the ballot papers in his custody, and the Judge, upon inspecting the ballot papers (*g*) and hearing such evidence as he may deem necessary, and on

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(*a*) As to computation of time see note *b* to sec. 185, and note *h* to sec. 188.

(*b*) The affidavits must shew *prima facie* grounds for the belief that the result ought to be different, and these grounds must be such as can be said to be reasonably sufficient to support the motion.

(*c*) See note *m* to sec. 188.

(*d*) See note *b* to sec. 206.

(*e*) See sec. 163 and notes thereto.

(*f*) As to computation of time, see note *a* to sec. 185.

(*g*) See notes to sec. 152 as to what ballot papers should be rejected.

hearing the parties, or such of them as may attend, or their counsel, shall in a summary manner determine whether the majority of the votes given is for or against the by-law, and shall forthwith certify the result to the council. (*h*) 46 V. c. 18, s. 327.

Powers of Judge.

Costs.

326. The Judge shall on the scrutiny possess the like powers and authority as to all matters arising upon the scrutiny as are possessed by him upon a trial of the validity of the election of a member of a municipal council; (*i*) and in all cases costs shall be in the discretion of the Judge, as in the case of applications to quash a by-law, or he may apportion the costs as to him seems just. (*j*) 46 V. c. 18, s. 328.

Passing By-laws by Council.

By-law carried by voters to be passed by council.

327. A by-law which is duly carried by the vote of the qualified electors, (*k*) shall within six weeks thereafter be passed by the council. (*l*) 46 V. c. 18, s. 329; 49 V. c. 37, s. 6.

The passing of the by-law stayed on presenting of a petition.

328. In case of a petition being presented, (*m*) the by-law shall not be passed by the council until after the petition has been disposed of; (*n*) and the time which intervenes between the presenting of the petition and the final disposal

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(*h*) The decision of the judge as to the result is final. He is, in a summary manner, to *determine* whether the majority of the votes given is for or against the by-law. He is also to certify the *result* to the council.

(*i*) See sec. 188 *et seq.* and notes.

(*j*) See sec. 206 and notes, and note *l*, to sec. 332.

(*k*) See note *q* to sec. 318.

(*l*) The duty is one which may be enforced by *mandamus* after the lapse of a reasonable time, and after demand and refusal. *Re Peck and Peterborough*, 34 U. C. Q. B. 134. A council may refuse to pass a bonus by-law, the passage of which has been procured by bribery, and may set up the bribery in answer to an application for a *mandamus*. *Re Langdon*, 45 U. C. Q. B. 47. See further *Canada Atlantic R. W. Co.* v. *Ottawa*, 12 S. C. R. 365, 377. "The council" does not mean the council of the particular year in which the by-law was submitted. *S. C.* 8 O. R. 201. See also sec. 284. If the council, whose duty it is made to pass the by-law, be incompetent to pass any by-law, the by-law may, notwithstanding the vote of the electors, be set aside. *Re Baird and Almonte*, 41 U. C. Q. B. 415.

(*m*) That is a petition for a scrutiny. See sec. 323.

(*n*) See sec. 325.

thereof shall not be reckoned as part of the six weeks within which the by-law is to be passed. (*o*) 46 V. c. 18, s. 330.

DIVISION IV.—CONFIRMATION OF BY-LAWS.

By publication. *Sec.* 329.
Notice. *Sec.* 330.
When not moved against. *Sec.* 331.

Promulgation of by-laws.

329. Every promulgation of a by-law (*p*) shall consist in the publication, through the public press, of a true copy of the by-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to the courts to quash the same or any part thereof; and the publication aforesaid shall be in such public newspaper published either within the municipality, or in the county town or in a public newspaper published in an adjoining local municipality, (*q*) as the council may designate by resolution and the publication shall for the purpose aforesaid, be continued in at least one number of such paper each week for three successive weeks. 46 V. c. 18, s. 331.

Form of notice to be published with by-law.

330. The notice to be appended to every copy of the by-law for the purpose aforesaid, shall be to the effect following: (*r*)

NOTICE.—The above is a true copy of a by-law passed by the municipal council of the of , on the day of ,

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(*o*) The general rule in the case of a by-law approved by a majority of the electors is, that it shall be passed within six weeks thereafter. This section creates a necessary exception to the general rule. It excludes from the six weeks whatever time may intervene between the presenting of the petition and the final disposal thereof.

(*p*) Promulgation ordinarily means publication; but it is intended by this Act to give peculiar effect to a promulgated by-law. The notice appended to the by-law as published gives the time within which application must be made to the court to quash the by-law. If the by-law promulgated be within the proper competence of the council, it is to be deemed, notwithstanding any want of substance or form either in the by-law itself or in the time or manner of passing the same, a valid by-law. Sec. 331.

(*q*) See note *j* to sec. 293.

(*r*) Where an Act expressly provides that a thing is to be done in a given form, that form should be strictly followed. *Warren* v. *Love*, 7 Dowl. P. C. 602; *Codrington* v. *Curlewis*, 9 Dowl. P. C. 968. But see R. S. O. c. 1, s. 8 (35.) Where the direction is that the form given, or one "to the same effect" or to "the effect following,"

A.D. 18 , and approved by His Honour, the Lieutenant-Governor in Council on the day of , A.D. 18 (*where such approval is required to give effect to the by-law*); and all persons are hereby required to take notice, that any one desirous of applying to have such by-law or any part thereof quashed, must make his application for that purpose to the High Court at Toronto within three months next after the publication of this notice once a week for three successive weeks in the newspaper called the , or he will be too late to be heard in that behalf. (*s*)

46 V. c. 18, s. 332.

If not moved against within the time limited, to be valid.

331. In case no application to quash a by-law is made within three months next after the third publication thereof, and notice as aforesaid, the by-law or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same ordains, prescribes or directs anything within the proper competence of the council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the by-law itself, or in the time or manner of passing the same, be a valid by-law. (*t*) 46 V. c. 18, s. 333.

DIVISION V.—QUASHING BY-LAWS.

How to proceed. *Sec.* 332.
Time limited for application. *Secs.* 333, 334.
Motion against for corrupt practices. *Secs.* 335, 336.
Staying proceedings upon the by-law. *Sec.* 337.
Liability of Municipality for acts under illegal by-law. *Sec.* 338.
Tender of amends. *Sec.* 339.

Quashing by-laws.

332. In case a resident of a municipality, or any other

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shall be followed, similar strictness is not required. *Bacon* v. *Ashton*, 5 Dowl. P. C. 94; *Smith* v. *Wedderburne*, 4 D. & L. 296.

(*s*) In the case of a by-law imposing a rate, the application to quash cannot be entertained after three months from the promulgation. See sec. 334.

(*t*) If not of the proper competence of the council, a by-law affords under no circumstances protection for what is done under it. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626; *Alexander* v. *Township of Howard*, 14 O. R. 22. When by a by-law granting aid to a railway the debentures were made payable more than 20 years from the by-law taking effect contrary to sec. 340, sub-s. 2, the defect was held to be cured by promulgation. *Canada Atlantic R. W. Co.* v. *Cambridge*, 11 O. R. 392.

person interested (*a*) in a by-law, order or resolution of the council thereof, (*b*) applies to the High Court, (*c*) and pro-

(*a*) The applicant, in strictness, should state that he is a resident of the municipality in which the by-law was passed, or has an interest in the provisions of the by-law. *Babcock* v. *Bedford*, 8 U. C. C. P. 527; *Bogart* v. *Belleville*, 6 U. C. C. P. 425; *Kinghorn and Kingston*, 26 U. C. Q. B. 130. Where an applicant, who moved against a by-law of the united counties of Peterborough and Victoria, swore that during all the year 1850 he had been, and was at the time of the separation, a resident of and within the limits and boundaries of the town of Peterborough, a corporation within the county of Peterborough, it was held that the applicant was sufficiently described as a resident, so as to be entitled to make the application. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. Where a freeholder of a township, though not a resident, applied to quash a by-law, and it was objected that, being a non-resident, he could not do so; it was held that, as a freeholder of the township, he had an *interest* in all the by-laws passed by the township council sufficient to enable him to move to quash any of its by-laws. *In re De la Haye* v. *Toronto*, 2 U. C. C. P. 317. So it has been held that the owner of real estate in the municipality which had been assessed, though not himself named on the assessment roll, had a sufficient interest. *In re Boulton and Peterborough*, 16 U. C. Q. B. 380. Where the affidavit stated deponent to be a ratepayer and a resident householder, it was held unnecessary to give any further description of him. *Baker* v. *Paris*, 10 U. C. Q. B. 621. Acquiescence of the applicant cannot be properly used against him on an application to quash a by-law proved contrary to law, when other interests, both public and private, than those of the applicant are affected. *Per* Wilson, J., *In re Fairbairn and Sandwich East*, 32 U. C. Q. B. 582. Where the parties applying to quash a by-law incorporating a village, had voted at the municipal elections held for the village as incorporated; one of them had been a candidate for the office of reeve, and another had been elected to the school board, but none of them had promoted the passing of the by-law or had any part in the taking of the census required, it was held that the applicants were not estopped from moving to quash the by-law. *Re Fenton and County of Simcoe*, 10 O. R. 27. See also *Re Peck and Corporation of Galt*, 46 U. C. Q. B. 211.

(*b*) The power delegated to the Courts summarily to quash illegal by-laws, &c., is one, so far as municipal institutions are concerned, peculiar to this country. *Re Brodie and Bowmanville*, 38 U. C. Q. B. 580. Before the statute 12 Vict. c. 81, s. 165, the Courts had not any power summarily to quash *by-laws* of a municipality, see *In re McGill and Peterborough*, 9 U. C. Q. B. 562, and that power was not extended to *orders* and *resolutions* till 22 Vict. c. 99, s. 194. See *In re Daniels and Burford*. 10 U. C. Q. B. 478; *In re Cæsar and Cartwright*, 12 U. C. Q. B. 341. "Regulations" for a public market, adopted by the council, may be moved against as orders and resolutions under the meaning of this section. *In re Snell and Belleville*, 30 U. C. Q. B. 81. See further, note *k* to this section.

(*c*) The Divisional Court ought not to entertain applications to quash by-laws which should be made to a single judge. *Landry* v. *Ottawa*, 11 P. R. 442.

duces to the Court a copy of the by-law, order or resolution, (*d*) certified under the hand of the clerk and under the corporate seal, (*e*) and shews by affidavit that the same was

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(*d*) The applicant must produce to the Court a copy of *the* by-law, order or resolution, that is, of an *existing* by-law, &c. So that if before application the operation of the by-law be spent, *In re Terry and Haldimand*, 15 U. C. Q. B. 380, or expressly repealed, *In re McGill and Peterborough*, 9 U. C. Q. B. 562, the rule will be discharged. *Ib.* But where the repeal is after application to quash the by-law, and so a tacit acknowledgment of the illegality of the by-law, the municipality may be ordered to pay the costs of the application. *In re Coyne and Dunwich*, 9 U. C. Q. B. 309; *In re Coleman*, 9 U. C. C. P. 146. See further, *Patterson and Hope*, 31 U. C. Q. B. 360.

(*e*) It is not necessary that the copy should be sealed with wax. An impression made in ink with a wooden block in the place of a seal would seem to be a sufficient seal, *Reg.* v. *St. Paul's, Covent Garden*, 7 Q. B. 232; see also *Hamilton* v. *Dennis*, 12 Grant 325; *Re Bell and Black*, 1 O. R. 125; *Re Croome and the Municipal Council of Brantford*, 6 O. R. 188, especially if made on the implication that such impression is the seal of the corporation. *Kinghorn and Kingston*, 26 U. C. Q. B. 133. See also *In re Miles and Richmond*, 28 U. C. Q. B. 333. See further, *Ontario Salt Co.* v. *Merchant's Salt Co.*, 18 Grant 551; *In re Scott and Harvey*, 26 U. C. Q. B. 32. See also note *a* to sec. 288. Where the seal of the corporation, though not mentioned in the clerk's certificate, was on the same page with the certificate, immediately above it and opposite to the signature of the reeve and clerk, the by-law was held to be sufficiently complied with. *Baker* v. *Paris*, 10 U. C. Q. B. 621. The court will discharge a rule to quash a by-law, moved on a copy of the by-law, verified in a manner different from that prescribed by the statute, unless the reason for the variance is clearly and satisfactorily explained. *Buchart* v. *Brant*, 6 U. C. C. P. 130. Where the by-law was passed by the corporation of two united townships, and after dissolution of the union the applicant produced a copy of the by-law certified under the hand of the clerk of the senior township and under the corporate seal of that township, the statute was held to have been sufficiently complied with and the by-law quashed. *In re Scott and Harvey*, 26 U. C. Q. B. 32. Where the copy of the by-law put in, not being certified as the Act directs, could not be read, but the same was set out at length in affidavits filed, the deponent swearing that a by-law was passed by the town council in words following (setting out the by-law), the materials before the court were held sufficient. *In re School Trustees of Sandwich and Sandwich*, 23 U. C. Q. B. 639. A copy of the by-law filed was under the seal of the municipality and sworn to have been received from the clerk, and opposite the seal was the signature, "M. F., City Clerk," with the words, "a true copy," above. *Held*, sufficient. *Kinghorn and Kingston*, 26 U. C. Q. B. 130. See also *Re Vashon and East Hawkesbury*, 30 U. C. C. P. 194. It will be observed that the statute is silent as to the right of the clerk to charge fees for the certified copy or seal, while the statute 12 Vict. c. 81, s. 155, made it the duty of the clerk to give the copy

received from the clerk, (*g*) and that the applicant is resident or interested as aforesaid, (*h*) the Court, after at least four days' service (*i*) on the corporation of a rule (*j*) to shew cause.

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only "upon payment of his fees therefor." See *In re Township Clerk of Euphrasia*, 12 U. C. Q. B. 622.

(*g*) The procedure pointed out by this section is plain and simple. And yet it is often disregarded, and something more difficult adopted in substitution. See *per* Richards, C. J., in *Mottashed and Prince Edward*, 30 U. C. Q. B. 77. Where deponent swore that the copy produced was received by one T. from the clerk of the council, and by T. was delivered to the deponent, the affidavit was held sufficient. *In re Fisher and Vaughan*, 10 U. C. Q. B. 492. But where the applicant swore that he received the copy from the clerk of the council through R. J. F., his attorney, the sufficiency of the affidavit was doubted. *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 77. The statute does not require that the affidavit should refer to the copy of the by-law as annexed, or that it should in fact be annexed, but only that it be shewn that the copy produced is the copy received from the clerk. *Bessey and Grantham*, 11 U. C. Q. B. 156. But the court will not, without sufficient cause shewn on affidavit, dispense with the production of the copy of by-law, certified as the section requires. *In re Buchart and Brant*, 6 U. C. C. P. 134. The affidavit ought to be intituled of the court to which the motion is made: *Fraser* v. *Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 286; but where it appeared from the jurat to have been sworn before a commissioner of that court, the objection did not avail. *Ib.* See also *Kinghorn* v. *Kingston*, 26 U. C. Q. B. 130. Where the commissioner merely described himself as "a commissioner," &c., without stating of what court, it was held that the affidavit must be intituled. *In re Hirons and Amherstburgh*, 11 U. C. Q. B. 458. It need not be intituled "The Queen *v.* The Municipal Council of," &c., but may be "In the matter of W. S. C. and the Municipal Council of," &c. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. Affidavits in answer must, it is apprehended, be entitled in the same way as the rule which they are produced to oppose. See Tapping on Mandamus, 413. "In the matter of A. B., appellant, and C. D., respondent," held unobjectionable. *In re McLean and St. Catharines*, 27 U. C. Q. B. 603.

(*h*) See note *a* to this section.

(*i*) The meaning is that the corporation shall have four full days *at least* to answer the rule. See note *b* to sec. 185. The time under the old Act was at least *eight* days. Where, under the old Act, the rule *nisi* was obtained near the end of the term, and made returnable eight days after service, and defendants appeared during the following term and objected that the rule should have been to shew cause on a day certain: *Held*, that the objection, even if good, was waived by appearance. *Perry* v. *Whitby*, 13 U. C. Q. B. 564.

(*j*) The rule need not be intituled "The Queen *v.* The Municipal Corporation of," &c., but may be "In the matter of A. B. and The Corporation," &c. *In re Conger and Peterborough*, 8 U. C. Q. B. 49;

in this behalf, may quash the by-law, order or resolution, (*k*)

McLean and St. Catharines, 27 U. C. Q. B. 603. The service is to be "on the corporation," therefore, where the motion was to quash a by-law for taking stock in a railway company, on the return of the rule, and though the corporation did not shew cause, the court declined to hear counsel for the company. *In re Billings and Gloucester*, 10 U. C. Q. B. 273. In a subsequent case, where the corporation declined to shew cause, the court refused to hear counsel for some of the ratepayers. *In re Webb* v. *Yarmouth*, Q. B. H. T. 1866. See further *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502; *Hewison* v. *Pembroke*, 6 O. R. 170.

(*k*) A superintending power of a judicial character is necessary in order to keep corporate bodies of all kinds within legal and reasonable limits in the exercise of their powers. There has always been such a power where the English law has prevailed; without it great oppression might be exercised and great confusion created. It is a description of control from which any court would rather be relieved. In the nature of things the Legislature could not so exercise control as to meet the exigency of each case; it is, however, in their power to vest the authority where they think best. The court must exercise the authority in each case under the same sense of responsibility as they discharge their other duties. *Per* Robinson, C. J., in *In re Barclay and Darlington*, 12 U. C. Q. B. 92. The power, so far as the quashing of by-laws, orders and resolutions is concerned, depends wholly on this statute: *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626; and that power will in general be exercised only when there is some illegality apparent on the face of the by-law, &c. *In re Hill and Walsingham*, 9 U. C. Q. B. 310; *Grierson* v. *Ontario*, *Ib.* 623; *In re Standley and Vespra and Sunnidale*, 17 U. C. Q. B. 69; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Secord and Lincoln*, 24 U. C. Q. B. 142; *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 201; or where the by-law, order or resolution is shewn to have been passed under circumstances which, by the express terms of the statute make it illegal. *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 232; *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. The power of the court is not, however, limited to cases where illegality appears upon the face of the by-law, but extends to cases where the illegality is entirely extraneous. See *Re Fenton* v. *Simcoe*, 10 O. R. 27, where the cases on this point are reviewed. A by-law may be quashed if it has not been passed in the interest of the public, but simply to subserve the interests of an individual. *Re Morton and City of St. Thomas*, 6 A. R. 323. See also *In re Peck and Corporation of Galt*, 46 U. C. Q. B. 211; *In re Vashon and East Hawkesbury*, 30 U. C. C. P. 194; *Hewison* v. *Pembroke*, 6 O. R. 170; *Pells* v. *Boswell*, 8 O. R. 680. The exercise of the power is in every case discretionary; for it is not said the court *shall* quash, but that it *may* quash, &c. *In re Hodgson and York, Peel and Ontario*, 13 U. C. Q. B. 268; *In re Michie and Toronto*, 11 U. C. C. P. 386; see also *Bogart and Belleville*, 6 U. C. C. P. 428; *In re Simmons and Chatham*, 21 U. C. Q. B. 75. And where the by-law is legal on its face, and a great length of time has been allowed to elapse unexplained, between the passing of the by-law and the motion, the court will abstain from the exercise of its discretionary power. *In*

in whole or in part, for illegality, and, according to the result of the application, award costs for or against the corporation. (*l*) 46 V. c. 18, s. 334.

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re Hill and Tecumseth, 6 U. C. C. P. 297; *In re Cotter and Darlington*, 11 U. C. C. P. 265; *In re Grant and Toronto*, 12 U. C. C. P. 357; *In re Leddingham and Bentinck*, 29 U. C. Q. B. 206; especially if it be shown that work has been done under the by-law, money expended thereunder, or that the by-law has been otherwise so acted upon that its repeal would cause much inconvenience: *In re Hodgson and York, Peel and Ontario*, 13 U. C. Q. B. 268; *In re Ianson and Reach*, 19 U. C. Q. B. 591; *In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Drope and Hamilton*, 25 U. C. Q. B. 363; *In re Platt and Toronto*, 33 U. C. Q. B. 53; *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502. Where a party complaining of a by-law permitted a term of the Courts of Common Law to elapse without moving to quash it, the Court of Chancery refused to interfere by injunction to restrain the municipality from proceeding to enforce the provisions of the by-law. *Carroll* v. *Perth*, 10 Grant 64; *Grier* v. *St. Vincent*, 12 Grant 330; *S. C.* 13 Grant 512, 518; *Vandecar* v. *East Oxford*, 3 A. R. 131. But of course a by-law substantially illegal cannot (subject to the provisions of section 331) afford any protection for what has been done under it, and so incidentally its validity may be decided in an action, *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. So on an application to quash a conviction for something done contrary to a by-law, the legality of the by-law, though not quashed, may be questioned. *Reg.* v. *Osler*, 32 U. C. Q. B. 324; *Reg.* v. *Cuthbert*, 45 U. C. Q. B. 19. If the by-law be not void without being quashed, all proceedings duly had under it while in force may be justified under it. *Barclay* v. *Darlington*, 5 U. C. C. P. 432. No action can be brought for anything done under it till the by-law is quashed. See sec. 338. It is no ground of illegality for quashing a by-law that it is not sealed with the seal of the municipality, for unless so sealed it is not a legal by-law, and there is no jurisdiction to quash it as such. *In re Croft and Brooke*, 17 U. C. Q. B. 269. In some cases that which was intended to be a by-law, but is not in fact a by-law for want of the corporate seal, may be looked upon as a "resolution or order," and so subject to the summary jurisdiction of the court on application to quash. The court has refused to quash a by-law on the ground that a quorum of the council was not present at its passing. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. Where mere errors of calculation are charged, unless clearly made out, the court will not quash the by-law. *Paffard and Lincoln*, 24 U. C. Q. B. 16. And even if shewn to exist and to be extensive, the court will lean strongly to the support of the by-law where it appears to have been acted upon. *Grierson and Ontario*, 9 U. C. Q. B. 623; *Secord and Lincoln*, 24 U. C. Q. B. 142. Where an enquiry is sought as to corrupt practices in the passing of a by-law, with a view to setting it aside, the proceeding must be by summons and be confined to the particulars finally given by the applicant. *Re Credit Valley R. W. Co. and County of Peel Bonus*, 6 P. R. 62.

(*l*) The court awards costs "*for* or *against* the corporation"

Time within which application must be made.

Exception.

333. No application to quash a by-law, order or resolution, in whole or in part, shall be entertained unless the application is made within one year from the passing of the by-law, order or resolution, (*m*) except in the case of a by-law re-

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according "to the *result* of the application. See *Brown and York*, 9 U. C. Q. B. 453; *In re Peck and The Corporation of Galt*, 46 U. C. Q. B. 211. But the rule is not imperative. Where it was shewn that the applicant himself was a petitioner for the particular resolution moved against, costs were refused him though the resolution was quashed. *In re Morell and Toronto*, 22 U. C. C. P. 323. Where a municipal corporation, on being served with a rule *nisi*, repealed the by-law complained of, the court, notwithstanding, obliged them to pay the costs of the application. *In re Coyne and Dunwich*, 9 U. C. Q. B. 309; *In re Coleman*, 9 U. C. C. P. 146. Where municipal councils act with an anxious desire to comply with the provisions of the Act, and with a view to the promotion of the public benefit, applications made in the interest of private individuals to quash a by-law, if unsuccessful, should be visited with costs to be paid to the municipality. *In re Montgomery and Raleigh*, 21 U. C. C. P. 397, 398. Where, however, it appears that the corporation by its defective by-law induced the application, costs will be refused to them. *Re Platt* v. *Toronto*, 33 U. C. Q. B. 53. Where the by-law moved against is confirmed by the Legislature before argument, the Legislature should make some provision for costs incurred. *In re Holden and Belleville*, 39 U. C. Q. B. 88. If the corporation do not, when called upon, shew cause to the rule, though the rule be discharged, no costs will be given to them. *Kelly and Toronto*, 23 U. C. Q. B. 425; *In re Wycott and Ernestown*, 38 U. C. Q. B. 533. Where the applicant only partially succeeds, it is not usual to give him costs. *Patterson and Gray*, 18 U. C. Q. B. 189; *Ex rel. McMullen and Caradoc*, 22 U. C. C. P. 356. The court may apportion the costs between the parties according to the result. *Snell and Belleville*, 30 U. C. Q. B. 94; *Re Brodie and Bowmanville*, 38 U. C. Q. B. 580; *In re Holden and Belleville*, 39 U. C. Q. B. 88. Where the point raised was doubtful, the court discharged the rule without costs. *In re Storms and Ernestown*, 39 U. C. Q. B. 353. Where the Christian name of the applicant was incorrectly stated in the copy of rule served, and the affidavits in answer were styled in like manner, the mistake having subsequently been discovered, the court, in making absolute the rule to quash the by-law with costs, directed the costs incurred by the corporation in consequence of the error to be deducted. *In re Thompson and Bedford*, 21 U. C. Q. B. 545. Where the rule was discharged because the by-law was not sealed, it was discharged without costs. *In re Mottashed and Prince Edward*, 30 U. C. Q. B. 74.

(*m*) This is a limitation of the power conferred on the court by the preceding section. Before any limit was imposed, and without any reference thereto, the courts required applications to quash to be made within a reasonable time. *Walton* v. *Monaghan*, 13 U. C. C. P. 401; *In re Bogart* v. *Belleville*, 6 U. C. C. P. 425; *Standley and Vespra*, 17 U. C. Q. B. 69, see further *Scarlett* v. *York*, 14 U. C. C. P. 161; *In re Drope and Hamilton*, 25 U. C. Q. B. 363; *In re Sheley*

quiring the assent of electors or ratepayers, when the by-law has not been submitted to, or has not received the assent of the electors or ratepayers, and in such case an application to quash the by-law may be made at any time. (*n*) 46 V. c. 18, s. 335.

Time after which by-law imposing a rate cannot be quashed, if promulgated.

334. In case a by-law by which a rate is imposed has been promulgated in the manner hereinbefore specified, (*o*) no application to quash the by-law shall be entertained, (*p*) after

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and Windsor, 23 U. C. Q. B. 569; *Leddingham and Bentinck*, 29 U. C. Q. B. 206; *In re Richardson and Commissioners of Police for Toronto*, 38 U. C. Q. B. 621. The application under this section must be made "*within* one year after the passing of the by-law," &c. If not so made, *it shall not be entertained*. See *Smith* v. *Rooney*, 12 U. C. Q. B. 661, as to the meaning of similar words. When the by-law is invalid on its face it may be moved against, although a year has elapsed from the time it was passed. *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 183. An amending by-law may be moved against after the expiry of a year from the passage of the original by-law, (1) when the original by-law is *intra vires*, but by the amendment is made *ultra vires* or so objectionable as to demand the interference of the court: (2) when the original by-law is objectionable, and the amending by-law extends its objectionable provisions to new objects, new territory, or over a further period of time. Per Rose, J., *In re Milloy and Onondaga*, 6 O. R. 573. When, however, the original by-law is objectionable, and the amending by-law limits its application or makes some immaterial verbal alteration, the court should not interfere, as the party moving has lost his right to take the objection as against the old by-law. *Ib.* It is in the discretion of the court to require great promptness of application, and to refuse to quash a by-law, even though the application be made within the year. See remarks of Richards, C. J., in *Taylor and West Williams*, 30 U. C. Q. B. 348; see further *Carroll* v. *Perth*, 10 Grant 64; *Grier* v. *St. Vincent*, 12 Grant 330; *In re McAlpine and Township of Euphemia*, 45 U. C. Q. B. 199; *Re Fenton* v. *Simcoe*, 10 O. R. 27; *Harding* v. *Township of Cardiff*, 2 O. R. 329. It was at all times in the discretion of the court to refuse to accede to an application to quash a by-law when great inconvenience would arise from the quashing. *In re Grant and Toronto*, 12 U. C. C. P. 357; see further note *k* to sec. 332. In the case of a by-law imposing a rate and specially promulgated, the application is not to be entertained after three months from the third publication of the by-law. See sec. 334; see also sec. 331.

(*n*) If a by-law require the assent of the electors or ratepayers to render it valid, and no such assent be obtained, the by-law will be held void. See note *g* to sec. 293. And in such a case the application to quash the by-law "may be made at any time."

(*o*) See secs. 329 and 330.

(*p*) See note *m* to sec. 333.

the expiration of three months from the promulgation. (*q*) 46 V. c. 18, s. 336.

Quashing by-laws obtained by bribery, etc.

335. Any by-law the passage of which has been procured through or by means of any violation of the provisions of sections 209 and 210 of this Act, (*r*) shall be liable to be quashed upon an application to be made in conformity with the provisions hereinbefore contained. (*s*) 46 V. c. 18, s. 337.

Procedure in such case.

336.—(1) Before determining an application for the quashing of a by-law upon the ground that any of the provisions of the said sections 209 and 210 of this Act have been contravened in procuring the passing of the same, and if it is made to appear to a Judge of the High Court that

Inquiry by County Judge.

probable grounds exist for a motion to quash the by-law, the Judge may make an order for an enquiry to be held, upon such notice to the parties affected as the Judge may direct concerning the said grounds, before the Judge of the County Court of the county in which the municipality which passed the by-law is situate, and require that upon the enquiry all witnesses, both against and in support of the by-law, be orally examined and cross-examined upon oath before the County Court Judge. (*t*)

(*q*) The inconvenience of quashing a by-law imposing a rate, after it has been acted upon for months, is generally greater than the inconvenience of allowing a by-law, though technically defective, to exist. The effect of this section will be important, in curing technical defects in by-laws imposing rates. The limitation applies to by-laws which have been specially promulgated, and commences at the time of such promulgation. Per Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425; and where the by-law imposes a rate, it would be well for the applicant moving against it more than three months after its passing, to show that it has not been specially promulgated. *In re Grant and Toronto*, 12 U. C. C. P. 357; but see also remarks of Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425. If the by-law moved against be one requiring the assent of electors or ratepayers, and it be shown that such by-law was not submitted to the electors or ratepayers, the application to quash it may be made at any time. See note *n* to sec. 333.

(*r*) See notes to secs. 209 and 210.

(*s*) See sec. 332.

(*t*) This section provides for an "enquiry," and afterwards for "a hearing and determination." The enquiry is to be held before the Judge of the County Court, and the hearing and determination before a Judge of the High Court; but before an enquiry can be ordered, "probable grounds" for a motion to quash the by-law must

(2) The County Court Judge shall thereupon return the evidence so taken before him to one of the registrars of the High Court at Toronto; and after the return of the evidence, and upon reading the same, a Judge of the High Court may, upon notice to such of the parties concerned as he thinks proper, proceed to hear and determine the question; (*u*) and if the grounds therefor appear to him to be satisfactorily established, he may make an order for quashing the by-law, and he may order the costs attending the proceedings to be paid by the parties or any of them who have supported the by-law; and if it appears that the application to quash the by-law ought to be dismissed, the Judge may so order, and in his discretion award costs, to be paid by the persons applying to quash the by-law. (*a*) 46 V. c. 18, s. 338.

Return of evidence.

Judgment.

Costs.

337. After an order has been made by a Judge directing an enquiry, and after a copy of the order has been left with the clerk of the corporation of which the by-law is in question, all further proceedings upon the by-law shall be stayed until after the disposal of the application in respect of which the enquiry has been directed; but if the matter is not prosecuted to the satisfaction of the Judge he may remove the stay of proceedings. 46 V. c. 18, s. 339.

Stay of proceedings on the by-law.

338. In case a by-law, order or resolution is illegal in whole or in part, (*b*) and in case anything has been done

Municipality to be liable for acts done under illegal by-law.

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be shewn to the Judge to whom the application is made. On the enquiry all witnesses, both against and in support of the by-law, shall be orally examined and cross-examined before the County Judge; but apparently no express provision is made for compelling the attendance of witnesses on the enquiry; in all probability their attendance may be compelled by subpœna issued out of the Court in which the application is pending.

(*u*) As to what is a hearing and determination, see *Rex* v. *Justices of Kent*, 9 B. & C. 283, and *In re Judge of Perth and Robinson*, 12 U. C. C. P. 252.

(*v*) See note *l* to sec. 332.

(*b*) It is not necessary that the illegality should appear on the face of the by-law in order to bring into operation the provisions of this section. For example, in the case of a road, if it be run through an orchard contrary to the statute, there can be no question about the by-law being illegal. In such a case the party must apply and have the by-law quashed, before he can sue for anything done under the by-law. There may be cases where parties might maintain actions without taking that course; but it is apprehended the effect of the section is to deprive parties of any action whatever against any one, so long as the by-law has neither been quashed nor repealed, when-

under it (*c*) which, by reason of such illegality, gives any person a right of action, (*d*) no such action shall be brought until one month has elapsed after the by-law, order or resolution has been quashed or repealed, nor until one month's notice in writing of the intention to bring the action has been given to the corporation, (*e*) and every such action shall be brought against the corporation alone, and not against any person acting under the by-law, order or resolution. (*f*) 46 V. c. 18, s. 340.

Notice of action.

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ever it is made to appear that what is complained of was done under a by-law. *Black* v. *White*, 18 U. C. Q. B. 371; *Smith* v. *Toronto*, 7 U. C. L. J. 239. When the by-law is quashed or repealed, the action must be brought against the corporation alone, and not against the person acting under it. *Black* v. *White*, 18 U. C. Q. B. 371. The quashing or repeal of the by law is not to be regarded as taking the defence from parties acting under the by-law while in force; for all proceedings had under it while in force, if legalized by it, may, notwithstanding its repeal or being quashed, be justified under it. *Per* Macaulay, C. J., in *Barclay* v. *Darlington*, 5 U. C. C. P. 438.

(*c*) Are these words to be held to mean only anything done in the execution of the by-law or for the purpose of carrying it out, or are they not to be construed to mean also anything done in reliance on the legality of the by-law, as, entering upon land which, if the by-law be valid, is a public highway, but which, if the by-law be not valid, leaves the parties exposed to be treated as trespassers? Unless the latter construction be adopted, the Act will in this respect fail in many cases of the effect which must have been intended. *Per* Robinson, C. J., in *Black* v. *White*, 18 U. C. Q. B. 369.

(*d*) The right of action intended is a right of action for the recovery of damages, in which it may be important to tender amends. It does not therefore apply to actions of replevin, when brought merely to try the right to the property replevied. *Wilson* v. *Middlesex*, 18 U. C. Q. B. 348; *Haynes* v. *Copeland*, 18 U. C. C. P. 150. See also *Malott* v. *Township of Mersea*, 9 O. R. 611.

(*e*) The section declares that no action shall be brought until the by-law, &c., has been quashed or repealed for one month and this, as already mentioned, precludes the bringing of the action while the by-law, &c., subsists, see *Carmichael* v. *Slater*, 9 U. C. C. P. 423; but it does not follow that the Statutes of Limitations only begin to run from the time of quashing or repealing. It is clear that actions may be brought (though only against the corporation) for things done under the illegal by-law, &c., that is things done in pursuance of, or in execution of it, or under its authority while in force. The right of action may be held to vest the moment the thing is done, and, if so, every statute limiting a right of action of the particular kind would begin to run forthwith. Were it not so, very stale matters might be made grounds of action against municipal councils, which (in the case of individuals) would be outlawed.

(*f*) Whether notice of action can be given *before* the by-law, &c., is quashed or repealed is doubtful, but the question is material only in

Tender of amends.

339. In case the corporation tenders amends to the plaintiff or his solicitor, (*g*) if such tender is pleaded and (if traversed) proved, and if no more than the amount tendered is recovered, the plaintiff shall have no costs, but costs shall be taxed to the defendant, and set off against the verdict, and the balance due to either party shall be recovered as in ordinary cases. (*h*) 46 V. c. 18, s. 341. *See sec.* 430.

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case the time for bringing the action is limited, and the time about to expire. See *McKenzie* v. *Kingston*, 13 U. C. Q. B. 634.

(*g*) The law as to tender is not much understood by the general public.

1. *Definition.*—A tender in this section means the offering of money in satisfaction of a cause of action arising out of something done under a by-law, order or resolution, quashed or repealed.

2. *How made.*—A tender must be unqualified and unconditional. *Mitchell* v. *King*, 6 C. & P. 237; *Jennings* v. *Major*, 8 C. & P. 61; *Strong* v. *Harvey*, 3 Bing. 304. Whether conditional or not, is a question for the jury. *Marsden* v. *Goode*, 2 C. & K. 133; *Milburn* v. *Milburn*, 4 U. C. Q. B. 179. Strictly speaking, the tender ought to be of specie; but a tender of bank notes, if not objected to on the ground of being notes, will be good. *Blow* v. *Russell*, 1 C. & P. 365. The precise sum intended, or more, must be tendered, without requiring change. *Brady* v. *Jones*, 2 D. & R. 305. The money oughtto be actually produced, *Kraus* v. *Arnold*, 7 Moo. 59; *Leatherdale* v. *Sweepstone*, 3 C. &. P. 342; *Thompson* v. *Hamilton*, 5 O. S. 111; but this may be dispensed with by the party to whom the tender is made, as, where defendant said he had the money in his pocket, and plaintiff said, "You need not give yourself the trouble of offering it, for I will not take it." *Douglass* v. *Patrick*, 3 T. R. 684; *Jackson* v. *Jacob*, 3 Bing. N. C. 869; *Llado* v. *Morgan*, 23 U. C. C. P. 517; *Matheson* v. *Kelly*, 24 U. C. C. P. 598. A receipt for the money cannot be insisted upon. *Richardson* v. *Jackson*, 8 M. & W. 298; *Cole* v. *Blake*, 1 Peak 179.

3. *To whom made.*—Under this section the amends may be tendered "to the plaintiff or his solicitor." A tender, strictly speaking, ought to be made before the writ is sued out, and if made to the plaintiff himself would be more satisfactory than if made to his solicitor. But if the solicitor is authorized to settle the business, and writes to defendants previous to suing out the writ warning them of the action unless they pay him the money or the like, the tender may clearly be made to the solicitor. Sellon, Pr. I. 315. The solicitor must, under any circumstances, be one employed in the particular action, and not merely one generally employed by plaintiff. *Ib.*

(*h*) The object of the tender is to prevent useless litigation. The tender admits a cause of action, but limits the amount of damages arising therefrom. The party tendering in effect says, "I admit you have a right to bring this action, but I do not admit that you are entitled to any damages beyond the amount tendered." If plaintiff decline the tender, and recover no more than the amount tendered,

DIVISION VI.—BY-LAWS CREATING DEBTS.

Requisite formalities. *Secs.* 340-342.
Principal may be repayable by annual instalments. *Sec.* 342.
Special rates a charge on property. *Sec.* 343.
Assent of electors, when required. *Sec.* 344.
When special council meeting requisite. *Sec.* 345.
When repealable and when not. *Secs.* 346, 347.
Illegal repeal to be ignored by municipal officers. *Sec.* 348.
By-laws for contracting debts. *Purchase of public works, etc., by councils.* *Sec.* 349.
Rates to be imposed therefor. *Sec.* 350.
Registration of By-laws. *Secs.* 351-356.

Terms of.

340. Every municipal council may, under the formalities required by law, pass by-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the ratable property of the municipality, for any purpose within the jurisdiction of the council, (*k*) but no such by-law shall be valid which is not in accordance with the following restrictions and provisions, (*l*) except in so far

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he loses his costs, and is compelled to pay the costs of defendant, which may be set off against his verdict.

(*k*) In ordinary trading, corporations have clearly an implied power to borrow money for the purposes of their business, and to give securities for the repayment of the same. *Curtis* v. *Leavit*, 15 N. Y. 9; *Barry* v. *Merchants' Exchange*, 1 Sandf. Ch. (N. Y.) 280; *Beers* v. *Phœnix Glass Co.* 14 Barb. (N. Y.) 358; but whether such a power is to be implied in the case of a municipal corporation is not so clear. See *Bank* v. *Chillicothe*, 7 Ohio, Part II. 31; *State* v. *Maddison*, 7 Wis. 582; *Mills* v. *Gleason*, 11 Wis. 470; *City* v. *Lamson*, 9 Wall. (U. S.) 477; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Canal Banks* v. *Supervisors*, 5 Denio. (N. Y.) 517; *Barker* v. *Loomis*, 6 Hill. (N. Y.) 463; *People* v. *Brennan*, 39 Barb. (N. Y.) 522. The power, however, is here in express terms conferred subject to certain limitations. Express power to borrow implies the power to give security to the lender. *Railroad Co.* v. *Evansville*, 15 Ind. 395, *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496; *Middleton* v. *Alleghany Co.*, 37 Pa. St. 237; *Seybert* v. *Pittsburg*, 1 Wall. 272; *De Voss* v. *Richmond*, 18 Gratt. (Va.) 338; *Rogers* v. *Burlington*, 3 Wall. 654; *Galena* v. *Corwith*, 48 Ill. 423. It has been held that a municipal corporation has no power to borrow at a greater rate of interest than six per cent. See note *p* to sec. 340, sub-s. 3. Where the money is borrowed for one purpose it cannot in general be applied by the Council to a different purpose. *Brogdin* v. *Bank of Upper Canada*, 13 Grant 544; see further *Baxter* v. *Kerr*, 23 Grant 367.

(*l*) The power to raise money by municipal taxation is liable to

as is otherwise provided in the next following two sections of this Act:

When to take effect.

1. The by-law, if not creating a debt for the purchase of public works, (*m*) shall name a day in the financial year in which the same is passed, when the by-law is to take effect, and if no day is named, shall take effect on the day of the passing thereof; (*n*)

When debt to be redeemed.

2. If not contracted for gas or water-works, or for the purchase of public works, according to the statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such by-law takes effect; and if the debt is contracted for gas or water-works, the same shall in like manner be paid in thirty years at furthest from the day on which the by-law takes effect; (*o*)

If for gas or water works, etc.

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abuse. For the security of the creditor, as well as for the protection of the ratepayers, restrictions are necessary. It is here expressly declared that no such by-law as authorized shall be valid if not in accordance with certain restrictions and provisions. The statute is not simply, as formerly, directory. See *In re Sells and St. Thomas*, 3 U. C. C. P. 285, 291; see further *Baltimore* v. *Gill*, 31 Md. 375; *Weston* v. *Syracuse*, 17 N. Y. 110; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Smith* v. *Morse*, 2 Cal. 524; *Galena* v. *Corwith*, 48 Ill. 423.

(*m*) As to which see sec. 349.

(*n*) It seems intended that in the body of every by-law shall be stated a day on which the same is to take effect. The date on which a by-law is to take effect does not necessarily form a part thereof, though it may be the practice of some officer of the corporation to mark the day of its passing on it. "The Legislature, however, meant that it should not be necessary to refer to any thing extrinsic to the by-law for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the by-law under which it was issued were legal, and might, on that account, require to see when the by law took effect." *Per* Draper, C. J., *In re Michie and Toronto*, 11 U. C. C. P. 384. But where no day is named and nothing has been done under the by-law, it ought to be quashed. *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. The day named in the by-law for it to take effect must be in the same financial year in which the by-law is passed. It is not intended that the municipal council shall have power to postpone the operation of such a by-law to the next or any subsequent year.

(*o*) The power to contract a debt payable at a future period, and to secure its payment at the period by the ratepayers then living, is founded on the principle that the object for which the debt is contracted is one which will benefit future ratepayers as well as those

Yearly rate.

3. The by-law shall settle a certain specific sum to be raised annually, for the payment of interest during the currency of the debentures; also, a certain specific sum to be raised annually for the payment of the debt: such sum to be such as will be sufficient with the estimated interest on the investments thereof, to discharge the debt when payable; (*p*)

Interest on investments how estimated.

4. In settling the sum to be raised annually for the payments of the debt, the rate of interest on investments shall not be estimated at more than five per cent. per annum, to be capitalized yearly; (*q*)

Property on which rate to be levied.

5. The by-law shall provide that such annual sum shall be raised and levied in each year by a special rate, sufficient therefor, on all the ratable property in the municipality; (*r*) or, if the by-law is for a work payable by local assessment, on all the property ratable under the by-law or per foot frontage as the case may be;

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living at the time the debt is contracted. This is quite consistent with the policy of municipal law, as explained in notes to sec. 357.

(*p*) The by-law is to settle a specific sum to be raised annually, and is not to leave it to a municipal officer to be computed. See *Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93. The enactment is applicable to by-laws granting to trustees of school sections authority to issue debentures for the erection of a school house. *In re McIntyre and Elderslie*, 27 U. C. C. P. 58. It is provided that the council may, in its discretion, make the principal of the debt payable by annual instalments (sec. 342). It has been held that municipal corporations cannot raise money at a rate of interest exceeding six per cent. *Wilson and the Municipal Council of Elgin*, 13 U. C. Q. B. 218: but see now *North Gwillimbury* v. *Moore*, 15 U. C. C. P. 445; *In re Nichol and Alnwick*, 41 U. C. Q. B. 577; *Scottish American Investment Co.* v. *Elora*, 6 A. R. 628. A corporation can be compelled to levy the rate required for the sinking fund *Clarke* v. *Palmerston*, 6 O. R. 616. See notes to sec. 357.

(*q*) It does not appear to be necessary that the by-law should set forth the *estimates* on which it is founded. The court will intend that proper estimates have been made, in the absence of evidence that they are wanting. If the rate is demonstrated to be insufficient the by-law may be quashed. The corporation has no power by resolution to appropriate money from the investment of the sinking fund to any other purpose. *Re Barber and Ottawa*, 39 U. C. Q. B. 406.

(*r*) It does not appear to be necessary that the by-law should state the rate to be calculated at so much in the dollar on the *actual* value of the ratable property of the municipality. *Tylee* v. *Waterloo*, 9 U.C. Q. B. 572. In the absence of anything to the contrary, the court will intend that the council has acted according to law. *Ib.* The council is empowered to apply surplus income and other surplus funds to the payment of the debt. Sec. 377.

6. The by-law, unless it is for a work payable by local assessment, (*s*) shall recite: (*t*) Recitals:

(*a*) The amount of the debt which the new by-law is intended to create, and, in some brief and general terms, the object for which it is to be created; Amount and object of debt;

(*b*) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; Amount to be raised annually;

(*c*) The amount of the whole ratable property of the municipality according to the last revised, or revised and equalized assessment roll; The value of the ratable property;

(*d*) The amount of the existing debenture debt of the municipality, (*u*) and how much (if any) of the Amount of existing debt.

(*s*) As to which see sec. 341.

(*t*) It was at one time held that the omission of a prescribed recital did not invalidate the by-law; that the statute was directory and not imperative. See *In re Sells and St. Thomas*, 3 U. C. C. P. 291; see, however, the following note.

(*u*) The by-law should describe the debts and their amounts. See *Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93; *Ex parte Hayes and Toronto*, 7 U. C. C. P. 255. These may be shewn in the recitals of the by-law. Where a by-law recited that the amount of the whole ratable property of the township, according to the last assessment returns was £114,756, and that it would require the annual rate of 2½d. in the pound as a special rate for payment, &c., and then enacted that a special rate of 2½d. should be levied to pay the principal and interest of the loan to be raised under the by-law, and that the proceeds of such special rate should be applied solely to the payment, &c., until the same be fully paid and satisfied: Held, that the recital as to the amount of ratable property and the assessment returns was sufficient, and that it sufficiently appeared that the amount was to be raised in each year. *In re Cameron and East Nissouri*, 13 U. C. Q. B. 190. In one part of the by-law the reeve was empowered to issue debentures for such sums as should be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000. In subsequent clauses a special rate was imposed to pay "the said sum of £10,000," and the application of "the said sum of £10,000" was pointed out. The debentures were directed to be made payable "within twenty years of the time that this by-law shall come into operation." Held, that the amount of the loan, and the time when the debentures were to be made payable, was stated with sufficient certainty. *Ib.* See also *In re Lloyd and the Corporation of Elderslie*, 44 U. C. Q. B. 235; *In re Gilchrist and the Corporation of Sullivan*, 44 U. C. Q. B. 588. Where a by-law provided that the site of an old town-hall should be disposed of, and any money above the proceeds of the old hall required for the erection of a new one, should be levied on the ratable property in the municipality, but did not fix

principal or interest is in arrear. (*v*) 46 V. c. 18, s. 342.

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the amount or the rate to be levied, this part of the by-law was held bad. *In re Hawke and Wellesley*, 13 U. C. Q. B. 636. When errors in computation only are shewn in a by-law, though extensive, the Court will lean strongly to support it, especially when it has been acted upon. *Secord and Lincoln*, 24 U. C. Q. B. 142; *Grierson and Ontario*, 9 U. C. Q. B. 623. Not only the rate must be mentioned in the by-law, but the amount to be raised thereby, see *Tylee and Waterloo*, 9 U. C. Q. B. 572, and also the purpose or object for which it is required. *Ib.* Thus, "to pay off two debentures held by William Allan, for erecting the court-house in said district," *Ib.* 588, or "for the purpose of liquidating the sum of £1,500 due to the Gore Bank, and the sum of £500 due by the District to Alexander Drysdale, Esquire." *Ib.* Besides, the by-law must recite the amount of the whole ratable property of the municipality, according to the last revised or revised and equalized assessment roll. See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.

(*v*) It is to be regretted that the Legislature did not insert in the Act forms of by-laws for the issue of debentures; the forms here given may be found useful in framing by-laws under this and the next two succeeding sections.

A BY-LAW TO RAISE THE SUM OF $ FOR THE PURPOSE OF AND TO AUTHORIZE THE ISSUE OF DEBENTURES THEREFOR.

WHEREAS it is necessary to raise the sum of for the purpose of (*state in brief and general terms the object for which the debt is to be created*); and in order thereto it will be necessary to issue debentures of the municipality of the of for the sum of dollars payable as herein provided. Sec. 340 6 (*a*).

AND WHEREAS it will be requisite to raise annually during the term of *twenty* (*or as the case may be*) years by special rate for paying the said debt and interest the sum of dollars. Sec. 340 6 (*b*).

[(*Or if the debt is payable by annual instalments under sec. 342 substitute the following.*)

AND WHEREAS it will be requisite to raise the several sums in each year respectively set forth in the Schedule to this By-law. Sec. 340 6 (*b*); 342.]

AND WHEREAS the amount of the whole ratable property of the Municipality according to the last revised (*or* revised and equalized assessment roll) amounts to . Sec. 340 6 (*c*).

AND WHEREAS the existing debenture debt of this Municipality amounts to dollars and no principal or interest is in arrear (*or as the case may be*). Sec. 340 6 (*d*).

Therefore the Municipal Council of the Corporation of the of enacts as follows:

1. It shall be lawful for the Mayor (*or* Reeve) of the said for the purposes aforesaid to borrow the said sum of dollars and to issue debentures of the said municipality to the amount of dollars in sums of not less than one hundred dollars each, payable at the end of *twenty* (*or as the case may be*) years from the date on which

this By-law takes effect, and to bear interest at a rate not exceeding per cent. per annum payable half yearly on the days of and in each and every year during the currency of the said debentures. Secs. 340 (2); 414.

[(*If the debt is payable by annual instalments under sec. 342 substitute after the words "one hundred dollars each"*) payable in the manner, for the amounts and at the times respectively set forth in the Schedule to this By-law. Sec. 342.]

2. The said debentures as to principal and interest shall be payable at .

3. It shall be lawful for the Mayor (*or* Reeve) of the said Municipality, and he is hereby authorized and instructed to sign and issue the said debentures hereby authorized to be issued, and to cause the same and the interest coupons attached thereto to be signed by the Treasurer of the said Municipality; and the Clerk of the said Municipality is hereby authorized and instructed to attach the seal of the said Municipality to the said debentures; Sec. 405.

4. There shall be raised and levied annually by a special rate on all the ratable property in the said Municipality the sum of dollars for the payment of interest during the currency of the said debentures and also the sum of dollars for the payment of the said debt. Secs. 340, (3, 5).

[(*Or if the debt is payable by annual instalments under sec. 342 substitute the following*)

There shall be raised and levied in each year by special rate on all the ratable property in the said Municipality a sum sufficient to discharge the several instalments of principal and interest accruing due on the said debt as the same become respectively payable according to the Schedule to this By-law. Sec. 340 3, 5; 342 (2).]

5. This By-law shall take effect on the day of A. D. 18 . Sec. 340 1.

6. The votes of the ratepayers of the said Municipality shall be taken on this By-law at the following times and places, that is to say on day the day of next at the hour of 9 o'clock in the forenoon, and continuing until 5 o'clock in the afternoon of the same day. Sec. 293 1. See also sec. 116.

(*Insert here the Polling places and the names of the Deputy Returning officers.*) Sec. 293 1.

7. On the day of the Mayor (*or* Reeve) shall attend at the Council Chamber at o'clock to appoint persons to attend at the various polling places and at the final summing up of the votes by the Clerk respectively, on behalf of the persons interested in and promoting or opposing the passing of this By-law. Secs. 296, 287.

8. The Clerk of the Council of the said Municipality shall attend at the in the of at o'clock in the noon of the day of 18 and sum up the number of

By-law for a work payable by local assessment must recite:

341.—(1) If the by-law is for a work payable by local assessment, it shall recite: (*w*)

Amount and object of debt.

(*a*) The amount of the debt which the by-law is intended to create, (*a*) and, in some brief and general terms, the object for which it is to be created;

Amount to be raised annually.

(*b*) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the by-law.

Value of real property ratable;

(*c*) The value of the whole real property ratable under the by-law, as ascertained and finally determined as aforesaid;

That debt created on security of special rate.

(*d*) That the debt is created on the security of the special rate settled by the by-law, and on that security only. (*b*) 46 V. c. 18, s. 343.

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votes given for and against the By-law. See. 296.
Dated at the of this day of A.D. 18 .

A. B., Mayor. [*L. S.*]
C. D., Clerk.

Where the By-law provides for the payment of the debentures by instalments insert a Schedule shewing the amount payable in each year. See 51 V. c. 41 Schedule.

(*w*) See note *t* to section 340.

(*a*) See note *u* to sec. 340.

(*b*) The following form may be useful in framing a by-law under this section.

A BY-LAW TO RAISE THE SUM OF $ FOR THE PURPOSE OF AND TO AUTHORIZE THE ISSUE OF DEBENTURES THEREFOR.

WHEREAS it is necessary to borrow the sum of dollars for the purpose of (*state in brief and general terms the object for which the debt is to be created*) and in order thereto it will be necessary to issue debentures of the Municipality of the of for the sum of dollars payable as herein provided. See. 341 (1) (*a*).

[(*If the Municipality has obtained temporary advances under sec. 621 (1) insert*):

AND WHEREAS temporary advances or loans for meeting the cost of the said work (*or* improvement) have been made, and a special assessment is necessary for the repayment thereof. See. 621 (1).)

AND WHEREAS a by-law of the said was duly passed on the day of 18 authorizing the said works, and providing that the expense of such proposed work (*or* improvement) should be assessed and levied upon (*describe the real property specially benefited by the work or improvement*) and that the cost of the same should be temporarily provided for as aforesaid, and that a special assessment for the cost thereof should be made upon the said real property after the said work (*or* improvement) should be completed;

(2) In the matter of by-laws passed, or to be passed for works payable by local assessment, in order to facilitate the

Power to guarantee local im-

AND WHEREAS under the said by-law the said work (*or* improvement) has been made as aforesaid;

AND WHEREAS it will be requisite to raise annually in each year for the period of *twenty* (*or as the case may be*) years during the currency of the debentures to be issued hereunder for paying the said debt and interest the sum of dollars. Secs. 341 (1) *b*; 621 (2).]

[(*Or if the debt is payable by annual instalments under sec. 342 substitute*):

AND WHEREAS it will be requisite to raise the several sums in each year respectively as set forth in the Schedule to this by-law. Secs. 341 (1) *b*; 342.]

AND WHEREAS the whole of the real property ratable under this By-law is of the value of dollars according to the last revised (*or* revised and equalized) assessment roll. Sec. 341 (1) *c*.

AND WHEREAS the debt created hereunder is created on the security of the special rate settled by this By-law, and on that security only (*or if the debentures are to be guaranteed by the Municipality at large substitute*) on the security of the special rate settled by this By-law and further guaranteed by the said Municipality at large. Secs. 341 (1) *d*; 341 (2).

Therefore the Municipal Council of the Corporation of the of enacts as follows:

1. It shall be lawful for the Mayor (*or* Reeve) of the said for the purposes aforesaid to borrow on the security of the special rate hereinafter mentioned, and on that security only [(*or if guaranteed by the Municipality at large substitute*) on the security of the special rate hereinafter mentioned and further guaranteed by the Municipality at large] the said sum of dollars and to issue debentures of the said Municipality to the amount of dollars in sums of not less than one hundred dollars each, payable at the end of *twenty* (*or as the case may be*) years from the date on which this By-law takes effect and to bear interest at a rate not exceeding per cent. per annum, payable half yearly on the days of and in each and every year during the currency of the said debentures. Secs. 341 (2), 414, 621 (2).

(*If the debt is payable by annual instalments under sec. 342, substitute after the words "one hundred dollars each"* payable in the manner, for the amounts and at the times respectively set forth in the Schedule to this By-law. Sec. 342.)

2. The said debentures as to principal and interest shall be payable at .

3. It shall be lawful for the Mayor (*or* Reeve) of the said Municipality, and he is hereby authorized and instructed to sign and issue the said debentures hereby authorized to be issued, and to cause the same and the interest coupons attached thereto to be signed by the Treasurer of the said Municipality; and the Clerk of the

provement debentures.

negotiation of debentures issued thereunder, and add to their commercial value, the council of any township, city, town, or incorporated village, may declare that the debt to be created on the security of the special rate settled by the by-law is further guaranteed by the municipality at large, anything contained in sub-section (*d*) of this section to the contrary notwithstanding. 49 V. c. 37, s. 39; 50 V. c. 29, s. 48.

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said Municipality is hereby authorized and instructed to attach the seal of the said Municipality to the said debentures. Sec. 405.

4. There shall be raised and levied annually by special rate on all the property ratable under this By-law (*or* per foot frontage *as the case may be*) the sum of dollars for the payment of interest during the currency of the said debentures, and also the sum of dollars for the payment of the said debt. Sec. 340 3, 5.

(*Or if the debt is payable by annual instalments under sec. 342, substitute the following:*

There shall be raised and levied in each year by a special rate on all the property ratable under this By-law (*or* per foot frontage *as the case may be*) a sum sufficient to discharge the several instalments of principal and interest accruing due on the said debt as the same become respectively payable according to the Schedule to this By-law. Secs. 340 4, 5; 342 (2).

This By-law shall take effect on the day of A. D., 18 .

(*If desired the two following clauses may be added.*)

5. The owner of any such real property may, during the currency of the said debentures, commute for the payment of his proportionate share of the said work by paying such sum as may be necessary to realize at the end of the currency of the said debentures a sum equivalent to the annual special rate then uncollected. Sec. 612 6.

6. The amount of debentures authorized to be issued under this By-law is subject to consolidation by including the same in a collective or cumulative By-law to be hereafter passed, consolidating the same with other amounts authorized or to be authorized by other Local Improvement By-laws, and under which consolidating By-law the required debentures to provide for the amounts to be raised under this and said other individual By-laws shall be issued in a consecutive issue, as shall in said consolidating By-law be more particularly enacted in that behalf. Sec. 409.

Dated at the of this day of A. D. 18 .

A. B., Mayor. [*L. S.*]

C. D., Clerk.

Where the By-law provides for the payment of the debentures by instalments insert a Schedule shewing the amount payable in each year. See 51 V. c. 41 Schedule.

As to by-laws for special rates by county councils for local improvements in townships. See secs. 631-633.

Municipal council may make principal repayable by equal annual instalments.

342—(1) In any case of passing a by-law for contracting a debt, by borrowing money for any purpose, (*c*) the municipal council may in its discretion make the principal of the debt repayable by annual instalments during the currency of the period (not exceeding thirty years, if the debt is for gas or water works, and not exceeding twenty years if the debt is for any other purpose) within which the debt is to be discharged; such instalments to be of such amounts that the aggregate amount payable for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the other years of such period; and may issue the debentures of the municipal corporation for the amounts, and payable at the times, corresponding with such instalments, together with interest, annually or semi-annually, as may be set forth and provided in the by-law. (*d*)

What by-law shall set out.

(2) The by-law shall set forth a certain specific sum, to be raised in each year during the currency of the debt, which annual sum shall be sufficient to discharge the several instalments of principal and interest accruing due on such debt, as the said instalments and interest become respectively payable, according to the terms of the by-law; (*e*) and in cases within this

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(*c*) See note *k* to sec. 340.

(*d*) The ordinary mode is to provide for the raising of a certain amount for the annual interest and a certain amount for the annual sinking fund, so as, within the period specified in the by-law, to discharge the debt and interest. See sub-ss. 3 & 4 of sec. 340, and notes thereto. But the council in its discretion may now, under this section, make the principal repayable by annual instalments. When this mode is adopted, it obviates the necessity for the accumulation and investment of the sinking fund. But still there is the limitation that the instalments shall be "of such amounts that the aggregate amount payable for principal and interest in any year shall be *equal*, as nearly as may be, to what is payable for principal and interest during each of the other years of such period." Had the limitation been that the instalments should be equal in each year, it would have been more easily understood; but it applies as well to the interest as the principal, and it is declared that the aggregate amount for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the *other* years. With each payment of an instalment for principal, the interest would, under ordinary circumstances, be reduced, and so fluctuate from year to year. Whether this would be a compliance with the provision that the aggregate in each year for principal and interest shall be equal, "as nearly as may be," remains to be decided.

(*e*) See notes *p* and *q* to s. 340.

section it shall not be necessary that any provision be made for a sinking fund. (*f*) 46 V. c. 18, s. 344.

Special rates a charge on property.

343. Every special assessment made, and every special rate imposed and levied, under any of the provisions of this Act and all sewer rents and charges for work or services done by the corporation, on default of the owners of real estate, under the provisions of any valid by-law of the council of the said corporation, shall form a lien and charge upon the real estate upon, or in respect of which, the same shall have been assessed and rated or charged, and shall be collected in the same manner, and with the like remedies, as ordinary taxes upon real estate are collectable, under the provisions of *The Assessment Act*. 46 V. c. 18, s. 345.

Rev. Stat. c. 193.

By-laws for raising money not for ordinary expenses must (with certain exceptions) receive assent of electors.

344.—(1) Every by-law (except for drainage, as provided for under section 569 of this Act, or for a work payable entirely by local assessment), (*g*) for raising, upon the credit of the municipality, any money not required for its ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, receive the assent of the electors of the municipality in the manner provided for in section 293 and following sections of this Act; (*h*) except that in

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(*f*) For reasons already explained in note *d* to this section.

(*g*) See sec. 341.

(*h*) "I incline to think that any appropriation of moneys for other than ordinary purposes, whether payable within the year or not, requires the express sanction of the ratepayers. I am led to this conclusion from the exception in regard to county councils." *Per* Spragge, V. C., in *Edinburgh Life Ass. Co.* v. *St. Catharines*, 10 Grant 388. The town of St. Catharines was authorized to issue debentures to the amount of £45,248, for the liquidation of which a special rate was directed to be levied, the proceeds of which were directed to be invested and form a sinking fund for this purpose. By the Act the town was prohibited from passing any by-law to create any new debt extending beyond the year in which the by-law was passed, except for the construction of water works, until the debt was reduced to £25,000. The special rate authorized to be imposed had been duly levied and collected, but instead of investing the same to form a sinking fund for the payment of the debentures, it was alleged it had been applied to the general purposes of the town. The defendants denied the misapplication of the fund, but did not shew how it had been applied. With a view of inducing the county council to remove the county town of Lincoln from Niagara to St. Catharines, the town council of St. Catharines, without any by-law authorizing the same, contracted with certain builders to erect a gaol and court house for the use of the county, at an outlay of £3,000, to be completed in two years. Upon an application made

counties the county council may raise, by by-law or by-laws without submitting the same for the assent of the electors, of such county or counties, for contracting debts or loans, any sum or sums not exceeding in any one year $20,000 over and above the sums required for its ordinary expenditure. (*i*)

Exception as to by-laws for contracting extra debts not exceeding in any year $20,000.

(2) Provided always, that where a county and city are united for judicial purposes the council of the county or city may by by-law or by-laws passed at any meeting of such council without submitting the same for the assent of the electors of such county or city, as the case may be, for contracting such debt, raise such sums of money as may be required for erecting, building and furnishing a court house and offices, to be used in connection therewith, and for acquiring such land as may be necessary or convenient for the purposes of such court house and offices. 46 V. c. 18, s. 346.

Exception as to erecting court houses and offices.

(3) And provided always that the council of a town heretofore or hereafter withdrawn from the county, and continuing so withdrawn pursuant to the provisions hereof, or of a city heretofore or hereafter erected, may, by by-law or by-laws passed at any meeting of such council, without submitting the same for the assent of the electors of such town or city as the case may be, raise such sum or sums of money as may be required to liquidate their share of the county debt as awarded or agreed upon pursuant to this Act, and to issue debentures for that purpose at such rates, for such times and upon such terms as they may theretofore have done, or be

Exception as to payment by a city or town of share of county debt.

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at the instance of the holders of the debentures issued under the first mentioned Act, the Court restrained the town from suffering or permitting the buildings to be proceeded with. On appeal the injunction was dissolved, it appearing that the contract had been cancelled, and that no liability had been incurred by the corporation extending beyond the current year. *Ib.* If it had been shewn that any act of the corporation would have had the effect of incurring a liability payable in a future year, the injunction would have been retained to the hearing. *Ib.* See *In re Carpenter and the Township of Barton*, 15 O. R. 55.

(*i*) It will be observed that the exception only extends to the raising of any sum or sums, not exceeding in any one year $20,000 "over and above the sums required for ordinary expenditure." The general rule would appear to be that a by-law, to raise money not required for ordinary expenditure, must be submitted to the electors. See preceding note. To that rule an exception is created in favour of a county municipality under the circumstances here stated, and subject to the restrictions contained in the next section.

entitled to do for meeting any other liability of said town or city as the case may be. 49 V. c. 37, s. 7.

Certain by-laws of county council not to be valid unless passed at meeting specially called and held three months after notice, etc.

345. No such by-law of a county council for contracting any such debt or loan for an amount not exceeding in any one year $20,000 over and above the sums required for its ordinary expenditure, (*k*) other than a by-law to raise money for erecting, building and furnishing a court house and offices aforesaid, or for acquiring land as provided in sub-section 2 of the last preceding section, shall be valid, (*l*) unless the same is passed at a meeting of the council specially called for the purpose of considering the same, (*n*) and held not less than three months after a copy of the by-law, as the same is ultimately passed, (*o*) together with a notice of the day appointed for the meeting, has been published in some newspaper issued weekly or oftener within the county (as constituted for judicial purposes), or if there is no such public newspaper, then in a public newspaper published nearest to the county, (*p*) which said notice may be to the effect following: (*q*)

Form of notice.

The above is a true copy of a proposed by-law to be taken into consideration by the municipality of the county (*or* united counties) of , at , in the said county (*or* united counties), on the day of , 18 , at the hour of o'clock in the noon, at which time and place the members of the council are hereby required to attend for the purpose aforesaid.

G. H.,
Clerk.

46 V. c. 18, s. 347.

When part only of money raised, by-law may be repealed as to residue.

346. Where part only of a sum of money provided for by a by-law has been raised, the council may repeal the by-law as to any part of the residue and as to a proportionate part of the special rate imposed therefor, (*r*) provided the repeal-

(*k*) See note *h* to sec. 344.

(*l*) In other words, shall be illegal. As to setting aside a by-law for illegality, see sec. 332 and notes thereto.

(*n*) See note *e* to s. 236.

(*o*) If, between publication and passing, a material alteration is made in the by-law, the by-law will be invalid. *In re Bryant and Pittsburgh*, 13 U. C. Q. B. 347.

(*p*) See note *j* to s. 293.

(*q*) See note *r* to s. 330.

(*r*) It is an erroneous impression, that when once a municipal council has determined to contract a loan, in order to aid, for example

ing by-law recites the facts on which it is founded, and is appointed to take effect on the 31st day of December in the year of its passing, and does not affect any rates due, or penalties incurred before that day, and provided the by-law is first approved by the Lieutenant-Governor in Council. 46 V. c. 18, s. 348.

Proviso.

347. After a debt has been contracted, the council shall not, until the debt and interest have been paid, repeal the by-law under which the debt was contracted, or any by-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the council shall not alter a by-law providing any such rate, so as to diminish the amount to be levied under the by-law, (*s*) except in the cases herein authorized, (*t*) and shall not apply to any other purpose any money of the corporation which, not having been previously otherwise appropriated by any by-law or resolution, has been directed to be applied to such payment. (*u*) 46 V. c. 18, s. 349.

Until debt paid certain by-laws cannot be repealed.

Nor altered.

Exceptions.

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in advancing a public work, the whole matter of the by-law passed for that object is entirely out of their control, and not merely such parts of it as are necessary for securing those who have advanced money under its provisions. *In re Hill and Walsingham*, 9 U. C. Q. B. 310.

(*s*) The Court will by mandamus compel the levying of a rate to provide a sinking fund for the payment of debentures where such sinking fund is provided for in the by-law. *Clarke* v. *Palmerston*, 6 O. R. 616.

(*t*) A municipal council has in general power to repeal and alter the by-laws of the municipality. Note *p* to sec. 53. This section creates an exception to the general rule. The provisions of it are necessary for the security of creditors. It is enacted, first, that no council shall either repeal a by-law under which a debt was contracted, or, secondly, alter a by-law providing the rate so as to diminish the amount to be levied under the by-law, &c. The by-law, however, may, under certain circumstances, be in part repealed, pursuant to sec. 346. So the rate may, under certain circumstances, be reduced, pursuant to secs. 367, 368. If the repealing by-law do not come under one of these enactments it must be quashed. *In re Smith and Oakland*, 24 U. C. C. P. 295.

(*u*) This requires the sinking fund to be left untouched, and prohibits the council from withdrawing, or otherwise applying any funds that have been appropriated thereto. See *In re Barber* v. *Ottawa*, 39 U. C. Q. B. 406.

No officer to neglect, etc., to carry out by-law for payment under colour of illegal by-laws.

348. No officer of the municipality shall neglect or refuse to carry into effect a by-law for paying a debt under colour of a by-law illegally attempting to repeal such first mentioned by-law, or to alter the same so as to diminish the amount to be levied under it. (*v*) 46 V. c. 18, s. 350.

Municipal councils may purchase public works, etc., and contract debts to Crown,

349. Any council may contract a debt to Her Majesty in the purchase of any of the public roads, harbours, bridges, buildings or other public works in Ontario, whether belonging to this Province or to the Dominion of Canada, or of any claim in respect of such works, (*a*) or of any right to col-

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(*v*) The object of this section is, to compel municipal corporations and their officers to keep faith with creditors. When the latter advance money upon the security of a by-law for its repayment in whole or in part, within a specified period at a specified rate, any attempt to repeal or alter the by-law, so as to diminish the amount to be levied under it, would be a fraud, whether so designed or not. But see sec. 346 *et seq*. Besides it is the duty of the treasurer of every municipality to see that the money collected under such by-law is properly applied to the payment of interest and principal of debentures issued under the by-law. See. 405.

(*a*) The statute 12 Vict. cap. 5, sec. 12, authorized the Governor in Council to contract with any municipal council or other local corporation, for the transfer to them of any of the public roads, harbours, bridges, &c., which it might be more convenient to place under the management of such local authorities. By statute 14 & 15 Vict. cap. 124. any municipal corporation in Upper Canada might contract a debt to Her Majesty in the purchase of any roads, &c., and the municipality might enter into, make or execute all or any bonds, deeds, covenants or other securities to Her Majesty, which the municipality might deem fit, for the payment of the amount of purchase money of any such work, and for securing the performance of any conditions of sale. By statute 16 Vict. cap. 181, s. 39, it was enacted that none of the provisions of the 4th or 16th sections of the Municipal Corporations Amendment Act of 1851 should affect or apply to any by-law passed or to be passed by any municipality in Upper Canada for any of the purposes mentioned in 14 & 15 Vict. cap. 124, or to any debts, bonds, deeds, covenants or other securities contracted, made, or executed to Her Majesty, under the provisions of that Act, or for any of the purposes therein mentioned. By statute 18 Vict. cap. 133, it was enacted, in effect, that no by-law, to be passed for raising money upon the credit of any city, town, township or village corporation, should have force or effect until the approval of the municipal electors should have been obtained. All these provisions were repealed by the Municipal Institutions Act of 1858; and sec. 226 of Con. Stat. U. C. cap. 54 (of which sec. 229 of 29 & 30 Vict. cap. 51 was a re-enactment) was in effect substituted for them. The fair result would seem to be that none of the sections 340 to 342 of this Act, relating to by-laws creating debts, extend to by-laws made for the purchase of public works, except in this manner and to the extent pointed out in the second paragraph of this section,

lect tolls on such road or bridge, or for the making such road or bridge wholly or partly free from tolls, and may execute such bonds, deeds, covenants, and other securities to Her Majesty, as the council may deem fit, for the payment of the price of such public work or claim already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to the municipal corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all necessary by-laws for any of the purposes aforesaid; and all such by-laws, debts, bonds, deeds, covenants and other securities shall be valid, although no special or other annual rate has been settled or imposed to be levied in each year, as provided by sections 340 to 342 of this Act. 46 V. c. 18, s. 351; 49 V. c. 37, s. 8.

although no special or other annual rate settled.

350. The council may in any by-law to be passed for the creation of such debt, or for the executing of such bonds, deeds, covenants, or other securities as aforesaid, to Her Majesty, or in any other by-law to be passed by the council, settle and impose a special rate per annum, of such amount as the council may deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed ratable property within the municipality, for the payment and discharge of such debts, bonds, deeds, covenants or other securities, or some part thereof, and the by-laws shall be valid, although the rate settled or imposed thereby is less than is required by the sections last mentioned; and the said sections shall, so far as applicable, apply and extend to every such by-law, and the moneys raised, or to be raised thereby, as fully in every respect as such provisions would extend or apply to any by-law enacted by any council for the creation of any debt as provided in the said sections, or to the moneys raised or to be raised thereby. 46 V. c. 18, s. 352.

Rates may be imposed for the payment of debts contracted with the Crown for such works.

351. Every by-law passed by any municipality for contracting any debt, by the issue of debentures for a longer term than one year, and for levying rates for the payment of such debts, on the ratable property of the municipality, or any part thereof, shall be registered by the clerk of the municipality,

By-laws creating debts to be registered.

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and that such by-laws would, at all events if passed by a county, be valid, although not containing any special rate, and although not assented to by the ratepayers. See *In re O'Neil and York and Peel*, 15 U. C. C. P. 249.

if a county, in the registry office for the county in which the county town is situate, or in case of local municipalities in the registry office of the registry division in which the local municipality is situate, within two weeks after the final passing thereof. 46 V. c. 18, s. 353.

Applications to set aside registration.

352—(1) Every such by-law so registered and the debentures issued thereunder, shall be absolutely valid and binding upon the municipality, according to the terms thereof, and shall not be quashed or set aside on any ground whatever, unless an application or action to quash or set aside the same be made to some Court of competent jurisdiction, within three months from the registry thereof, and a certificate under the hand and seal of the clerk of the Court, stating that such action or proceeding has been brought or application made, shall have been registered in said registry office within the period of three months.

When by-law, or so much thereof as is not quashed, to be valid.

(2) If the action or proceeding be dismissed, in whole or in part, then the by-law or so much thereof as is not the subject of the application, or not quashed upon the application, shall be absolutely valid and binding, according to the terms thereof, on the expiration of three months (*b*) from the date of the registration of the by-law; upon the dismissal of such action or proceeding, a certificate to that effect may be registered in the said registry office.

Certificate of dismissal of action.

Publication of notice.

(3) Notice of the passing of every by-law to which this and the preceding section refer, and which has not been submitted to the ratepayers, shall immediately after the registration of the by-law be published in some public newspaper, published either within the municipality, or in the county town, or in a public newspaper in an adjoining local municipality, as the council may designate by resolution, and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week, for three successive weeks. (*c*) 46 V. c. 18, s 354. *See sec.* 408.

Exception as to local improvement by-laws.

353. Nothing in the last preceding two sections contained shall make it obligatory upon any city, town, or incorporated village to register any by-laws providing for the issue of debentures, passed under the provisions of this Act relating to local improvements, but the same may be so registered at the option of the municipality. 46 V. c. 18, s. 355.

(*b*) See sec. 334.

(*c*) See note *f* to sec. 293.

354. The notice required to be published by section 352, shall be in the form following or to the like effect: Form of notice.

Notice is hereby given that a by-law was passed by the of of on the day of A.D. 18 , providing for the issue of debentures to the amount of $ for the purpose of and that such by-law was registered in the registry office of the county of on the day of A.D. 18

Any motion to quash or set aside the same or any part thereof, must be made within three months from the date of registration, and cannot be made thereafter.

Dated the day of 18

Clerk.

46 V. c. 18, s. 356.

355. The by-laws shall be registered in the way and manner provided by *The Debentures Registration Act*, and the registrar shall be paid the sum of $2 for registration thereof. 46 V. c. 18, s. 357. Manner of registration. Rev. Stat. c. 186

356.—(1) The certificate first referred to, in section 352, shall be in the form or to the effect following: Form of certificate of pending action

In the (*name of Court*)

This is to certify that in a certain action or proceeding in this Court, entitled the validity of by-law No. of the entitled a by-law has been called in question (*if a portion only of the by-law is called in question, state the fact*).

Dated,

(Signed), *A. B.*
Clerk of

{ Seal. }

(2) The certificate of dismissal of the action or proceeding shall be in the form or to the effect following: Form of certificate of dismissal of action

In the (*name of Court*)

I hereby certify that the action or proceeding in this Court, entitled calling in question the validity of by-law No. of the has been dismissed (*or if dismissed in part and granted in part, set out the order made, verbatim*).

Dated,

(Signed), *A. B.*
Clerk of

{ Seal. }

(3) The registrar shall be entitled to the sum of fifty cents for registering either of said certificates. 46 V. c. 18, s. 358. Fee for registration.

Division VII.—By-Laws Respecting Yearly Rates.

Amount and Limit of Rates. *Sec.* 357.
How estimated. *Sec.* 358.
Estimates and By-laws to be annual. *Secs.* 359, 360.
In case of deficiency. *Secs.* 361, 362.
In case of excess. *Sec.* 363.
Date from which Taxes imposed. *Sec.* 364.
Priority of Debentures. *Sec.* 365.
Power to Exempt from taxation. *Sec.* 366.
Reduction of Special Rate. *Sec.* 367.
Formalities in By-law therefor. *Sec.* 368.

Yearly rates to be levied, sufficient to pay all debts payable within the year.

357—(1) The council of every municipal corporation, and of every provisional corporation, shall assess and levy on the whole ratable property within its jurisdiction, (*c*) a sufficient sum in each year to pay all valid debts of the corporation whether of principal or interest, falling due within the year (*d*)

(*c*) The assessment is to be on "the *whole* ratable property, &c." An assessment, therefore, on a portion of the ratable property, such as wild lands, would be invalid.

(*d*) The power given is to assess and levy, &c., a sufficient sum in *each* year to pay all *valid* debts falling due *within the year*. It is not easy to define what is meant by "a valid debt." It may be described as a debt which the corporation is legally liable to pay, and the payment of which may be enforced by process of law. The word "debt" must be taken as used in its most comprehensive sense, "as something due from one to another." *Per* Spragge, V. C., in *Wilkie and Clinton*, 18 Grant 559. The sinking fund for payment of debentures is a debt, and a corporation can be compelled by mandamus to levy the necessary rate. *Clarke* v. *Palmerston*, 6 O. R. 616. Then the assessment is to be to pay all valid debts "falling due *within the year*." The general rule is that municipal bodies ought not, in one year, to levy a rate to pay debts due in a past year. The ratepayers of a locality should not be required to pay for the benefits which the ratepayers of a previous year enjoyed. Each year's debts should be paid by that year's assessments, unless in those expressly authorised cases where a deviation is allowed by statute. *Per* A. Wilson, J., in *Haynes* v. *Copeland*, 18 U. C. C. P. 167. After a lapse of years the ratepayers would be a totally different body from that which it was a few years previously. "Purchasers, availing themselves of their right of inspecting the annual reports of the auditors of the liabilities of the ratable property in the city, have acquired property which in the absence of any such liability appearing, as that which is now asserted, they may fairly claim to hold discharged of any such liability as that now sought to be imposed upon it. To charge the present owners of real property with this liability would seem to partake of the character of a fraud upon them, &c." *Per* Gwynne, J., in *Frontenac* v. *Kingston*, 20 U. C. C. P. 64. The general inconveni-

but no such council shall assess and levy in any one year Aggregate rate limited

ence of retrospective rates has in England been long known and recognized on the ground that succeeding ratepayers ought not to be made to pay for services of which their predecessors have had the benefit. See *Rex* v. *Haworth*, 12 East. 556; *Cortis* v. *Kent Waterworks Co.*, 7 B. & C. 314; *Rex* v. *Flintshire*, 5 B. & Al. 761; *Woods* v. *Reed*, 2 M. & W. 777; *Jones* v. *Johnson*, 5 Ex. 862; *S. C.* in Error 7 Ex. 452; *Rex* v. *Wavell*, Doug. 116; *Rex* v. *Goodcheap*, 6 T. R. 159; *Attorney-General* v. *Wigan*, 18 Jurist 299. As a rule, money required for municipal purposes ought to be raised, as the law directs, beforehand, instead of being in any manner or by any person advanced, in the expectation of reimbursement by the municipality. See *Rex* v. *Haworth*, 12 East. 556; *Tawney's Case*, 2 Ld. Rayd. 1009; *Dawson* v. *Wilkinson*, Cases Temp. Hard. 381. But see *Burnham* v. *Peterborough*, 8 Grant 336. It is for reasons such as these that the power to assess under this section is restricted to debts falling due "within the year." See *Clapp* v. *Thurlow*, 10 U. C. C. P. 533. The result appears to be that no municipal council has power, without the consent of the electors, to authorize the expenditure of money for purposes not falling under the head of ordinary expenditure, without having the money in hand to meet the demand, and without making provision, by rate or otherwise, to raise the required amount to meet the demand when due. *McMaster* v. *Newmarket*, 11 U. C. C. P. 398; see also *Gibb and Moore*, 27 U. C. Q. B. 150; *Grant and Puslinch*, *Ib.* 154; *In re Carpenter and the Township of Barton*, 15 O. R. 55. The policy of the law appears to be that all debts, where there is not money in hand to meet them, should be met by a rate in *anticipation*, or that otherwise the amount should be raised by rate within the current year. By the observance of this policy, abuses may be prevented. By the neglect of it, abuses will assuredly arise. If there were no policy to be observed, council after council might allow arrears of debts to accumulate, so as to bind future councils and to burthen future ratepayers. If this were permitted, there would be no check upon the extravagance of municipal councils. The legislature, in order to protect the ratepayers of the several municipalities against abuse of the powers entrusted to municipal councils, have provided certain restrictions and limitations upon their powers. It is for those who contract with the municipal councils to see that the powers given are exercised with a due regard to such restrictions and limitations. If they neglect this, they have their own want of caution to thank for any inconvenience or loss they may suffer in consequence, and they should not expect that such neglect should operate in their favour, and furnish an argument for disregarding those wise provisions of law which are designed to protect ratepayers from reckless or unauthorized expenditure or incurring of debts by municipal councils. See *Mellish* v. *Brantford*, 2 U. C. C. P. 35; *Scott* v. *Peterborough*, 19 U. C. Q. B. 469; *Wright* v. *Grey*, 12 U. C. C. P. 479; *Cross* v. *Ottawa*, 23 U. C. Q. B. 288; *Haynes* v. *Copeland*, 18 U. C. C. P. 150. See further, *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 601; *Potts* v. *Dunnville*, 38 U. C. Q. B. 96. It has therefore been held, that a municipal corporation, sued for work done, may plead that the cause of action arose for and concerning a debt incurred and falling due in

to two cents in the dollar.

more than an aggregate rate of two cents in the dollar on the actual value, exclusive of school rates. (*e*)

Provision when such aggregate not sufficient to pay debts payable within the year.

(2) If in a municipality the aggregate amount of the rates necessary for the payment of the current annual expenses of the municipality, and the interest and the principal of the debts contracted by the municipality on the 29th day of March, 1873, exceed the said aggregate rate of two cents in the dollar on the actual value of such ratable property, the council of the municipality shall levy such further rates as may be necessary to discharge obligations up to that date incurred, but shall contract no further debts until the annual rates required to be levied within the municipality are reduced within the aggregate rate aforesaid : but this shall not

Proviso.

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a previous year, which was not within the ordinary expenditure of the corporation for that year, and for which no rate was imposed by by-law. *Ib.* In such a case it would be held that there was no "valid debt." But suppose a valid debt incurred in one year, and the corporation omit to levy it in that year, does it become a less valid debt the next year ? Is the debt paid or the duty extinguished by reason of the omission ? *Per* John Wilson, J., in *Haynes* v. *Copeland*, 18 U. C. C. P. 168. If the debt be not paid or the duty discharged, plaintiff should be allowed to recover a judgment. The inability to make the judgment productive is no defence to the action, nor any reason that the judgment should not be obtained. See *Pallister* v. *Gravesend*, 9 C. B. 774 ; *Payne* v. *Brecon*, 3 H. & N. 572 ; *Bush* v. *Martin*, 2 H. & C. 311 ; *Hartnall* v. *Ryde Commissioners*, 4 B. & S. 361 ; *Hartley* v. *Mare*, 19 C. B. N. S. 85 ; *Scott* v. *Burgess and Bathurst School Trustees*, 19 U. C. Q. B. 28 ; *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584 ; *S. C.* 32 U. C. Q. B. 348 ; *Elderslie* v. *Paisley*, 8 O. R. 270. See further *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76.

(*e*) The limitation as to the amount of rate was first introduced by the 29 & 30 Vict. cap. 51, sec. 225. The rates in some municipalities were, before the passing of that Act, so rapidly increasing as to cause alarm among the ratepayers, and seriously diminish the value of property and so threaten to impoverish the ratepayers. The remedy applied is that of limiting the aggregate annual taxation to "two cents in the dollar on the actual value, exclusive of school rates." If an attempt were made to exceed the restriction, no doubt the court would, upon a proper case being made out, interfere by injunction. See *Edinburgh Life Ins. Co.* v. *St. Catharines*, 10 Grant, 379 ; *The State Ex rel. Circuit Attorney* v. *County Court of Saline County*, 11 Am. 454. The limit of two cents in the dollar includes the special sinking fund account to be levied in respect of past debts. *Wilkie* v. *Clinton*, 18 Grant 557. Where an Act prohibited municipalities from "contracting any debt or pecuniary liability, without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt so contracted," it was held inapplicable to ordinary street work, forming part of the current expenses of the

affect any special provisions to the contrary contained in any special Act now or hereafter in force. (*g*) 46 V. c. 18, s. 359.

How rates to be calculated.

358. In counties and local municipalities the rates shall be calculated at so much in the dollar upon the actual value of all the real and personal property liable to assessment therein. (*h*) 46 V. c. 18, s. 360.

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corporation, payable out of current revenues. *Reynolds* v. *Shreveport*, 13 La. An. 326. So where the words of the Act were that "the council shall not create or permit to accrue any debts or liability which shall exceed, &c.," it was held to have no relation to liabilities arising *ex delicto*. *McCracken* v. *San Francisco*, 16 Cal. 591. Whether special power to a municipal corporation to aid particular railway enterprises does or does not *pro tanto* repeal a limitation as to power of taxation, has, in the United States, been a subject of much controversy and of judicial conflict. *Butz* v. *Muscatine*, 8 Wall. (U.S.) 575; *Clarke* v. *Davenport*, 14 Iowa 494; *Learned* v. *Burlington*, 2 Am. Law Reg. N. S. 394 and note; *Leavenworth* v. *Norton*, 1 Kansas 432; *Burnes* v. *Achison*, 2 Kansas 254; *Fosdick* v. *Perrysburg*, 14 Ohio St. 472; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496. The inclination of the Supreme Court seems to be in favour of that construction which restricts such a limitation to the exercise of the power of taxation in the ordinary course of municipal action. *Amey* v. *Alleghany*, 24 How. (U. S.) 364. Generally speaking, the Legislature of Ontario, when intending that municipal corporations shall have power to aid corporations notwithstanding the two cent limitation, so declares in the particular Act of Incorporation.

(*g*) It is of course in the power of the Legislature to permit the limit to be exceeded either generally or for particular purposes. See *Amey* v. *Alleghany*, 24 How. (U. S.) 364; *Wallace* v. *San Jose*, 29 Cal. 180; *Wyncoop* v. *Society*, 10 Iowa, 388; *Rice* v. *Keokuk*, 15 Iowa, 569; *Gibbon* v. *Railroad Co.*, 36 Ala. 410; *Foote* v. *Salem*, 14 Allen. (Mass.) 87. It has done so notably in Acts for the aid of local railway enterprises.

(*h*) A by-law imposing a tax of so much an acre, arbitrarily, without reference to value is bad. *Doe McGill* v. *Langton*, 9 U. C. Q. B. 91. So a by-law imposing one uniform rate of 5s. per foot frontage, without reference to value, for draining into the common sewers of a city. *Ex parte Aldwell and Toronto*, 7 U. C. C. P. 104. Whenever a by-law in any of these respects is illegal, the Court may quash it; but the Court will not on an application for a mandamus extra-judicially advise a municipal corporation as to the proper mode of assessment. *In re Dickson and Galt*, 10 U. C. Q. B. 395. Formerly the value in cities, towns and villages was annual value, and in counties and townships actual value, and a process was necessary for capitalizing the annual values of real property at six per cent., and equalizing all values, with a view to the imposition of county rates. But since 1st January, 1867, the distinction has been abolished. Actual value is now the rule in all municipalities. Under the old law, a by-law imposing a rate for county purposes, to be levied on actual value, and in villages on annual value, was held not to be illegal. *Grierson* v. *Ontario*, 9 U. C. Q. B. 623.

Estimates to be made annually.

359. The council of every county or local municipality shall every year make estimates of all sums which may be required for the lawful purposes (*i*) of the county or local municipality, for the year in which such sums are required to he levied, each municipality making due allowance for the cost of collection, (*j*) and of the abatement and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. 46 V. c. 18, s. 361.

(*i*) Lawful purposes. Municipal councils, derive all their powers of taxation from Statute Law, if the purpose of taxation be not either expressly or inferentially authorized by Statute, it is not a lawful purpose. *Minot* v. *Inhabitants of West Roxbury*, 17 Am. 52.

(*j*) It is not necessary that the by-law should set forth the estimates on which it is founded. *Fletcher and Euphrasia*, 13 U. C. Q. B. 129. Mentioning a specific sum to be raised for specific purposes may be treated as setting forth an estimate that such sum is required for these purposes *Per* Robinson, C. J., *Ib.* 133. The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. *Ib.* A local municipality has not, it seems, the power to pass a by-law imposing a rate in aid of a county rate. *Ib.* A by-law authorizing a levy of certain moneys for township purposes, and *double* the amount required by the county for county purposes, is clearly bad. *Ib.* "To raise moneys for those same purposes to the full amount in one case, and to double the amount in the other, is, on the face of it, beyond the power of the township council, for it is exercising a power not only not conferred upon them, but expressly conferred upon another municipal corporation. The only argument offered to justify this course was that the township council had ascertained that, owing to the large proportion of lands held by non-residents, a sum very far short of that imposed by the county by-law would be collected by the collector on the roll; that a considerable deficiency would remain to be made up which the township treasurer would have no funds to meet, and therefore such a by-law was necessary to supply those funds. . . . For the purposes of this argument we will assume the object and intentions of the township council to be what are stated, and that the facts on which they rely as requiring them to take this course exist (though if our decision had to rest upon any such ground, it would have to be indispensable that all those facts should be established before us); but we think, assuming everything suggested, that will not sustain the by-law, *which is not, on the face of it, directed to the purpose of meeting a deficiency*, and does not even *suggest* any, if that would enable the township council to raise money by by-law expressly to meet it," &c. *Per* Robinson, C. J., *Ib.* 132. A by-law enacting "that the sum of three pence in the pound be levied and raised on all ratable property, to raise the sum of £375, to defray all expenses on the township for the current year, *county and township included*, and a portion of said sum to be laid out on repairs of roads and bridges as the council thinks most wanted, and if any balance remain, to be handed over to the credit of the township for the ensu-

360. The council of every municipality may pass one by-law, or several by-laws, authorizing the levying and collecting of a rate or rates of so much in the dollar upon the assessed value of the property therein as the council deems sufficient to raise the sums required on such estimates. (*k*) 46 V. c. 18, s. 362. By-laws for raising money by rate.

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ing year," was quashed. *White* v. *Collingwood*, 13 U. C. Q. B. 134. Draper, J., said: "In our opinion this by-law must be quashed altogether. As to the part imposing rates for county purposes, it is bad, for the reason given in the preceding case. *Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129. And then this by-law affords no means of telling how much must be deducted from the sum of £375 directed to be raised; nor yet can it be ascertained how much the rate of three pence in the pound must be reduced in order to raise that portion of £375 which the township council had authority to impose. There are also other apparent objections to this by law which it is not necessary to advert to for the purpose of sustaining our judgment." *Ib.* 135. It is now expressly enacted that "every local municipal council, in paying over . . . its share of any county rate or of any other tax or rate lawfully imposed for Provincial or local purposes *shall* supply out of the funds of the municipality *any deficiency arising from the non-payment of the tax*, but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect, the tax on *personal* property other than for county rates." Sec. 203 of Rev. Stat. c. 193. It has been intimated that a local municipality has no power to add to the column headed "County Rate" an allowance for the cost of collecting the county rate and for the abatements and losses which might occur in the collection of it, and for taxes on the lands of non-residents which might not be collected. *Grier* v. *St. Vincent*, 12 Grant 330: *S. C.* 13 Grant 512. Mowat, V. C., said in the last case: "The policy of the Legislature appears to have been to guard, as far as possible, the money to be raised in the township by its municipal authority for provincial, county, school and other special purposes from the control of the township council, these moneys not being raised by their authority, or not going to purposes over which they had jurisdiction." *Ib.* 519. And again: "It is now suggested that the eleventh section of the Assessment Act, as explained by the Interpretation Act, sanctions what was done here. That section directs every local municipality, in the estimates of the year, to make due allowance, . . . but says nothing as to the column in which the allowance is to be entered, . . . I think it is sufficiently apparent . . . that it is contrary to the intention and policy of the Legislature that the township should mix up in the 'County Rate' column money of which they are to have the control, with the money levied for the county." *Ib.* 520. If the tax Act direct a particular medium of payment, there can be no right of set-off so as to defeat it. *Trenholm* v. *Charleston*, 16 Am. 732.

(*k*) It is not necessary that a by-law should set forth the estimates on which it is founded. But the rate should be such as "the council *deems sufficient* to raise the sums required on such estimates." In order to ascertain the amount of the rate, it is necessary for the

If the amount collected falls short.

361. If the amount collected falls short of the sums required, the council may direct the deficiency to be made up

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council to know the amount proposed to be raised, when payable, and the whole amount of the ratable property of the municipality according to the last revised or equalized assessment rolls. These are required to be recited in the by-law itself, in order that the Court and others may judge of the sufficiency of the rate to raise the sum required by the estimates. But even if there be a mistake as to the amount of the ratable property, or an error as to the sufficiency of the rate, it does not follow that the by-law must be set aside. *Grierson* v. *Ontario*, 9 U. C. Q. B. 623. Burns, J., said: "I do not think the Legislature intended that the Court should be compelled to avoid a by-law because it could be made out by proof that some error was committed in a calculation, or something of that sort done which would in strictness be illegal." *Ib.* 632. In this case, the county council, in estimating the actual value of the ratable property in the village of Oshawa for 1851, made it £61,666, whereas it should have been £92,500, and yet the Court refused to set aside the by-law. *Ib.* But if the amount of the special rate be unequal or plainly insufficient and so illusory, the objection would assume a substantial character calling probably for the summary interference of the court. *Per* Draper, C. J., in *Secord and Lincoln*, 24 U. C. Q. B. 142, 150. In this case the sum mentioned in the by-law was $6,434,773, whereas the amount mentioned in the rate was $6,452,655, a difference "too small to require serious notice when the rate to be imposed was half a mill in the dollar," and so the Court refused to quashed the by-law. *Ib.* But where it was clear and admitted that "the 5¼d. in the pound on the sum stated in the by-law to be the value of the ratable property within the municipality, would not produce such an amount as would cover the payment, which, under the by-law, is appointed to be made within the year, but considerably less," the rule was made absolute to quash the by-law. *Perry* v. *Whitby*, 13 U. C. Q. B. 564. *Per* Robinson, C. J., "It will be found, I think, to come short by about £30." *Ib.* 567. This by-law on the face of it provided, "that if the rate in any one year should prove deficient, &c., such deficiency should be made up from the general fund of the town." As to this, the Chief Justice said, "And the manner in which the by-law provides for making up the deficiency that may arise in the payment, even if it were clearly legal, would not still cure the objection, for the statute expressly requires that the rate imposed *shall be* in itself sufficient to cover it upon the basis of calculation assumed, and if not it declares that the by-law *shall be* void." *Ib.* 567. But still it is apprehended that it is not necessary that calculations should in the case of every by-law be strictly correct. It is not incumbent on a municipal council to raise all that is required, and no more than is required for ordinary purposes, by one by-law. Were this the law, it would be impossible, owing to contingencies, for any municipal council to comply with it. The amount collected may either fall short of or exceed the sum required. If short, the deficiency may be made up from any unappropriated fund belonging to the municipality. Sec. 361. If no unappropriated fund, the deficiency may be equally deducted from the sums estimated or from any one or more of them or a second by-law passed under this section. If an excess, the sur-

from any unappropriated fund belonging to the municipality. (*l*) 46 V. c. 18, s. 363.

Estimates may be reduced.

362. If there is no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. (*m*) 46 V. c. 18, s. 364.

When sums collected exceed estimate, appropriation of the balance.

363. If the sums collected exceed the estimates, the balance shall form part of the general fund of the municipality, and be at the disposal of the council, unless otherwise specially appropriated; but if any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the amount in excess collected on account of such special tax shall be appropriated to the special local object. 46 V. c. 18, s. 365.

Yearly taxes to be computed from 1st January, unless otherwise ordered.

364. The taxes or rates imposed or levied for any year shall be considered to have been imposed, and to be due on and from the first day of January of the then current year, and end with the thirty-first day of December thereof, (*o*) unless otherwise expressly provided for by the enactment or

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plus becomes a part of the general fund of the municipality, unless otherwise appropriated. Sec. 363.

(*l*) See the last note.

(*m*) See note *k* to sec. 360.

(*o*) By Con. Stat. U. C. cap. 55, sec. 16, it was declared that the taxes or rates levied or imposed for any year shall be considered to have been *imposed* for the then current year commencing 1st January and ending 31st December. It was apparently enacted to remove a difficulty, such as that which presented itself in *Mellish* v. *Brantford*, 2 U. C. C. P. 35. *In re Yarwood*, 7 U. C. L. J. 47, Hughes, Co. J., said: "The sixteenth section of the Consolidated Assessment Act of Upper Canada, specifies that the taxes imposed for the year shall be considered to be so imposed for the current year, commencing on 1st January and ending with 31st December, unless otherwise expressly provided for by by-law. I consider in the absence of such a by-law if the taxes imposed for the year are to date from 1st January to 31st December, that the property upon which rates and taxes are assessed is to be that which the rated party owns or possesses within the same period, and no more; and if he were a resident of the town when the assessment was taken, or after the 1st of January, he was properly assessed, as a resident, because the assessment relates back to 1st of January in each year." In *Marr* v. *Vienna*, 10 U. C. L. J. 275, the same learned Judge said: "The facts which came out in this case shew me that the decision *In re Yarwood*, 7 U. C. L. J. 47 was not correct in one particular. Had the appellant there been assessed as well in Yarmouth as St. Thomas in respect of the same income, an injustice

by-law under which the same are directed to be levied. (*p*) 46 V. c. 18, s. 366.

Priority of debentures.

365.—(1) All debentures issued before the 1st day of January, 1867, by municipal corporations, under any by-law, and based upon the yearly value of ratable property at the time of passing such by-law, shall hold the order of priority which they occupied on the said 1st day of January, 1867; (*q*) and

How rates for paying them to be calculated.

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would at once have presented itself, which I am satisfied would have led me to a conclusion different to the one I arrived at, because the statute never intended a man to pay taxes *twice* in the same year in respect of the same property. So that I am now satisfied the sixteenth section only fixes the municipal fiscal year to commence on 1st January and to end on 31st December in each year (unless a municipal by-law fix it otherwise) for all purposes for which rates and taxes are to be considered to have been imposed for any current year." In *Ford* v. *Proudfoot*, 9 Grant 478; *Corbett* v. *Taylor*, 23 U. C. Q. B. 454, and *Bell* v. *McLean*, 18 U. C. C. P. 416, it was contended that taxes imposed for a particular year should be taken, not only as imposed, *but as due* from 1st January. But the Courts refused so to interpret this section. In *Corbett* v. *Taylor*, Draper, C.J., said: "We do not so interpret this section of the statute, but read it as intended (merely) to fix the fiscal year for all municipalities for the purposes of rates and taxes, and as providing that, no matter what part of a year a by-law imposing rates and taxes may be passed, the taxes shall be considered as imposed for the whole current year. The argument for the plaintiff, if pushed home, amounts to this: that on such a covenant, (against incumbrances) if entered into on 2nd January, the taxes for the current year would be in arrears on that day, if a tax or rate were imposed (at any time) within the year, and in effect the covenant would be broken as soon as made, although when entered into no tax or rate had been imposed." Wilson, J., in *Bell* v. *McLean*, 18 U. C. C. P. 416, said, "In one sense the tax may be said to be due when it is imposed by the passage of a by-law for that purpose; but it cannot be strictly said to be due until the collector has got his roll; nor even then, for he cannot distrain or take any compulsory proceeding to enforce payment until he has called at least once on the party taxed and demanded payment, or transmitted a statement by post demanding payment if the party be not resident within the municipality." And again, "A person who pays the taxes imposed on him for a particular year before the end of that year pays the amount in advance. He pays it up to a day which has not yet arrived. The time for its payment has gone by, but the time for its complete accrual has still to come," *Ib.* 421. See *Chamberlain* v. *Turner*, 31 U. C. C. P. 460.

(*p*) It is in the power of the municipal council to say by the by-law from what time the tax or rate shall be taken to have been imposed, &c. If there be no direction in the by-law the tax will be considered as imposed and due from 1st January of the year in which the by-law passed.

(*q*) Before 1st January, 1867, in cities, towns and incorporated villages yearly, and not actual values prevailed. By-laws of cities,

each municipal corporation (having so issued debentures) shall levy a rate on the actual real value of the ratable property within the municipality represented, sufficient to produce a sum equal to that leviable or produced on the yearly value of such property as established by the assessment roll for the year 1866 ; (*r*) and such rates shall be applied solely to the payment of such debentures, or interest on such debentures, according to the terms of the by-law under which they were issued. (*s*)

To be applied solely to such purposes.

Rate for sinking fund.

(2) In cases where a sinking fund is required to be provided, either by the investment of a specific rate or amount, or on a rate on the increase in value over a certain sum, then such a rate shall be levied as shall at least equal the sum originally intended to be set apart. (*t*) 46 V. c. 18, s. 367.

Exemption of manufactories or water works from taxation.

366. Every municipal council shall, by a two-thirds vote of the members thereof (*u*) have the power of exempting any manufacturing establishment, (*a*) or any water-works or water company, in whole or in part, from taxation for any

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towns and incorporated villages creating debts were up to that date necessarily based on yearly values. Debentures were issued and rights were acquired by the purchasers in the belief that such values should, until the payment of the debentures, be maintained. The object of this section is to declare that such rights shall be maintained.

(*r*) It is necessary for the corporation, under this part of the section : first, to estimate what amount in any year would be produced on the basis of a yearly value in 1866, and then to levy a rate on actual value sufficient to produce a sum equal to that amount.

(*s*) The application otherwise would be a breach of trust, and subject the council to be proceeded against by way of injunction. See *Wilkie* v. *Clinton*, 18 Grant 557.

(*t*) See note *r* above.

(*u*) See note *m* to sec. 22.

(*a*) A by-law exempting from taxation a manufacturing establishment and the land held by it, "established for the purpose of carrying on the milling and grain merchant business," was held bad as dealing with two kinds of business, the first of which alone there was power to exempt. The by-law was also held bad in exempting all the land and not the mill only, as other buildings suitable for the grain business might be erected thereon. The effect of the by-law was to discriminate against other large milling establishments in the municipality, and the by-law was on this ground also held bad. *People's Milling Co.* v. *Meaford*, 10 O. R. 405. A by-law limiting the assessment on property about to be used for manufacturing purposes to the value of the land without buildings is not valid under this section. *Re Denne and Peterborough*, 10 O. R. 767. The section is not in terms restricted to *new* manufacturing establishments. It was held, under a statute enabling municipal councils to exempt from taxation "manu-

period not longer than ten years, and to renew this exemption for a further period not exceeding ten years. (*b*) 47 V. c. 32, s. 8. *As to granting aid by bonus to manufacturing establishments*, see sec. 479 (10).

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factures of woollens, cottons, glass, paper, &c.," that a by-law exempting new manufactures as against old manufactures in the same line of business was void. *In re Pirie and Dundas*, 29 U. C. Q. B. 401. Wilson, J., in delivering the judgment of the Court, said, "I do not think it would be against the statute to provide that *all* cotton manufactures should be exempt from taxation, becauses it places all persons of the same line of business on the same footing, without giving any advantages or privileges to one or more of that trade over the others. * * * In no case is A. of the cotton or any other particular trade to get the benefit which B. of the same trade is not also to get. For this is a monopoly of the worst description, and it cannot be neecssary either for the proper stimulus of the *trade*, though it may stimulate A. very wonderfully in that trade, but then only at the expense of B." *Ib.*, 407; see further sec. 286 and notes thereto. An exemption cannot be granted arbitrarily; there must be a sufficient public benefit to the tax-payers of the locality to sustain a by-law, and there must be a good and valid consideration to support the exemption which should be in some way connected with the business of the manufacturing establishment. *Re Scott and Tilsonburgh*, 10 O. R. 119; 13 A. R. 233. Where a municipality agreed with the owner to exempt two existing manufacturing establishments in consideration of his paying a sum of $1,800 which the municipality had agreed to pay to a railway company and providing also the right of way upon the company building a switch into the town, it was held that there was not a proper public consideration from T. and that the agreement was in effect a sale of an exemption, and a by-law passed by the municipality for the purpose, but not submitted to the ratepayers, was quashed. *Ib.* The general rule is, that the burden of taxation should fall equally, and for this reason statutes exempting particular persons or particular property from taxation are construed strictly. See notes to sec. 7 of the Assessment Act. The municipal council may impose reasonable conditions to be complied with by those claiming exemption under this section. See *In re Pirie and Dundas*, 29 U. C. Q. B. 401. See sec. 320 as to bonuses in aid of manufactures.

(*b*) The power is restricted in the first instance to an exemption for ten years, with a power to renew the exemption for a further period not exceeding ten years,—in all, twenty years. The power to renew is not given from time to time, but only once to be exercised. See *Neilson* v. *Jarvis*, 13 U. C. C. P. 176, and *Bank of Montreal* v. *Taylor*, 15 U. C. C. P. 107. It is a question whether the by-law can be repealed within the period of exemption mentioned therein, after its terms have been accepted and acted upon by the persons in whose favour it is passed. In other words, the question is whether the by-law is to be looked upon simply as a local law or as a contract. If the former, it may be repealed; if the latter it cannot be repealed; for one party to a contract cannot rescind it against the will and to the prejudice of the other. See *East Saginaw Manufacturing Co.* v. *City of East Saginaw*, 2 Am. Rep. 82, *S. C.*, 19 Mich. 259; *The*

When the rate imposed by a by-law may be reduced.

367.—(1) If on account of a sum being on hand from a previous year, or a sum being on hand which has been derived from the work, (*c*) or from the investment of the sinking fund, or on account of the increased value of property liable to assessment, it is found to be unnecessary to levy the full rate imposed by the by-law, in order to raise the instalment of the sinking fund and interest required to be raised for any year, or to raise such instalments for any future years of the then unexpired time which the debentures have to run, the council may pass a by-law reducing the rate for such year or for any such future years, so that no more money may be collected than the amount required. 50 V. c. 29, s. 16.

(2) No such by-law shall be passed unless, having regard to the time the debentures have to run, a proper proportion of sinking fund and interest has been levied, according to the intention of the original by-law. 46 V. c. 18, s. 369 (2).

By-law to be approved by Lieutenant-Governor.

368. No by-law passed under the preceding section shall be valid unless, after it is passed, it is approved by the Lieutenant-Governor in Council; and the facts which authorize the passing of such by-law shall, on its submission for approval, be verified in the manner provided by section 290 of this Act. 46 V. c. 18, s. 370.

Division VIII.—Anticipatory Appropriations.

When and how made. *Secs.* 369, 370.
Or separation of municipalities. *Sec.* 371.

Anticipatory appropriations may be made.

369. In case any council desires to make an anticipatory appropriation for the next ensuing year in lieu of the special rate for such year, in respect of any debt, the council may do so, by by-law, in the manner and subject to the provisions and restrictions following:

What funds may be so appropriated.

1. The council may carry to the credit of the sinking fund account of the debt, as much as may be necessary for the purpose aforesaid;

People ex rel Cunningham v. *Roper*, 35 N. Y. 629; *People's Milling Co.* v. *Meaford*, 10 O. R. 405.

(*c*) R. S. O. 1877, c. 174, s. 350 (*c*) read "any sum derived for such particular year from the surplus income of *any* work." This section was repealed by 46 V. c. 18, s. 369, the wording of which was followed in 50 V. c. 29, s. 16.

(a) Of any money at the credit of the special rate account of the debt beyond the interest on such debt for the year following that in which the anticipatory appropriation is made ; (d)

(b) And of any money raised for the purpose aforesaid by additional rate or otherwise ;

(c) And of any money derived from any temporary investment of the sinking fund ; (e)

(d) And of any surplus money derived from any corporation work or any share or interest therein ; (f)

(e) And of any unappropriated money in the treasury ; (g)

Such moneys respectively not having been otherwise appropriated ;

The sources and application to be stated.

2. The by-law making the appropriations shall distinguish the several sources of the amount, and the portions thereof to be respectively applied for the interest and for the sinking fund appropriation of the debt for such next ensuing year; (h)

When moneys retained sufficient, the yearly rate may be suspended for the ensuing year.

3. In case the moneys so retained at the credit of the special rate account, and so appropriated to the sinking fund account from all or any of the sources above mentioned, are sufficient to meet the sinking fund appropriation and interest for the next ensuing year, the council may then pass a by-law directing that the original rate for such next ensuing year be not levied. (i) 46 V. c. 18, s. 371.

(d) Here it is clear that a year's interest in advance is to be retained, as directed by sec. 373.

(e) The investment authorized by sec. 376.

(f) See sec. 367 and note thereto.

(g) The right of a municipal council to take moneys already appropriated, and apply them to purposes different from the original appropriation, is very questionable. Though sometimes done, it ought never to be encouraged. In the case of appropriations to the sinking fund account of a debt, it cannot be legally done. See *Edinburgh Life Ass. Co.* v. *St Catharines*, 10 Grant 379 ; *In re Barber and Ottawa*, 39 U. C. Q. B. 406.

(h) The sources to be one or other of the foregoing.

(i) When the surplus, though not equal to the product of the entire rate for a year, is considerable, a by-law may be passed for the proportionable *reduction* of the rate, sec. 367 ; but when the surplus is sufficient to meet the sinking fund appropriation and interest for a year, a by-law may be passed to the effect that for that year the original rate *be not levied*.

370—(1) The by-law shall not be valid unless it recites—(*i*) By-law must recite.

(*a*) The original amount of the debt, and in brief and general terms, the object for which the debt was created; (*j*) The original debt and object;

(*b*) The amount, if any, already paid of the debt; The amount paid;

(*c*) The annual amount of the sinking fund appropriation required in respect of such debt; The annual amount for sinking fund;

(*d*) The total amount, then on hand, of the sinking fund appropriations, in respect to the debt, distinguishing the amount thereof in cash in the treasury from the amount temporarily invested; The amount for sinking fund in hand;

(*e*) The amount required to meet the interest of the debt for the year next after the making of such anticipatory appropriation; (*k*) and The amount required for interest;

(*f*) That the council has retained at the credit of the special rate account of the debt, a sum sufficient to meet the next year's interest (naming the amount of it), and that the council has carried to the credit of the sinking fund account a sum sufficient to meet the sinking fund appropriation (naming the amount of it) for such year; And that it is reserved, etc.

(2) No such by-law shall be valid unless approved by the Lieutenant-Governor in Council. 46 V. c. 18, s. 372. By-law to be approved by Lieutenant-Governor.

371. After the dissolution of any municipal union, the senior municipality may make an anticipatory appropriation for the relief of the junior municipality, in respect of any debt secured by the by-law, in the same manner as the senior municipality might do on its own behalf. (*l*) 46 V. c. 18, s. 373. Anticipatory appropriation on separation of municipalities.

(*i*) This section bears the same relation to sec. 369 that sec. 368 bears to sec. 367. The one is for the reduction of the special rate the other for the cessation of it for the year.

(*j*) See sec. 340, sub-s. 6, and notes thereto.

(*k*) See sec. 367.

(*l*) An anticipatory appropriation in relief may, it is apprehended, be either one in reduction of the special rate for a given year (sec. 367) or for the cessation of the rate for that year. Sec. 369.

TITLE III.—RESPECTING FINANCE.

DIV. I.—ACCOUNTS AND INVESTMENTS.
DIV. II.—COMMISSION OF INQUIRY INTO FINANCES.

DIVISION I.—ACCOUNTS AND INVESTMENTS.

Accounts for Special Rate and Sinking Fund. *Sec.* 372.
Surplus on Special Rate, Application of. *Secs.* 373, 374.
Surplus on Special Rate, Investment of. *Sec.* 375.
General Surplus, Application of. *Secs.* 376-379.
Members of Corporations not to be parties to Investments—Liability for Loss. *Sec.* 380.
Yearly Returns to Government. *Secs.* 381, 382.

Two special accounts to be kept: (1) of the special rates; (2) of the sinking fund or instalments of principal.

372. The council of every municipal corporation shall keep in its books two separate accounts, one for the special rate, and one for the sinking fund, or for instalments of principal of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted, (*a*) and shall keep the said accounts, with any others that are necessary,

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(*a*) Two accounts are mentioned; the special rate account, and the sinking fund or instalments account. The amount of all rates collected and received by the treasurer will appear in the first, and from it will be transferred to the second all such sums as form portions of the sinking fund or instalments fund account. The first or special rate account will constitute the interest account as well as the general account, and the sums required for interest will be retained therein until disbursed, and then be charged thereto. The sums transferred on account of principal to the second or sinking fund or instalments account, will of course be also charged against the first account, and when transferred be credited to the second or sinking fund or instalments account. The object of keeping the accounts as directed, and any other necessary accounts, is to exhibit *at all times* the state of *every* debt and the amount of moneys raised, obtained and appropriated for payment thereof. In one case the Chancellor of Upper Canada said, "I think I ought not to dispose of this case without observing upon the utter disregard of the provisions of the statute disclosed in the evidence on the part of those officers of the municipality whose duty it is to see to the keeping of its accounts. The separate accounts, so pointedly required by sec. 230 of the Act (same section as here annotated), seem not to have been kept, but special rates, sinking fund account, and rates and assessments for general purposes, appear to have been mixed up together. The directions of the statute are *so explicit that it was nothing less than most culpable neglect of duty not to follow them.*" *Wilkie* v. *Clinton*, 18 Grant 560.

so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof. 46 V. c. 18, s. 374.

When surplus may be applied to next year's interest, and to sinking fund.

373. If, after paying the interest of a debt and appropriating the necessary sum to the sinking fund of such debt, or in payment of any instalment of principal, for any financial year, there is a surplus at the credit of the special rate account of such debt, (*b*) such surplus shall so remain, and may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the sinking fund account, or in payment of principal of such debt. (*c*) 46 V. c. 18, s. 375.

Application of moneys with consent of Lieut.-Governor in Council.

374. The Lieutenant-Governor in Council may, by order, direct that such part of the produce of the special rate levied, and at the credit of the sinking fund account or of the special rate account as aforesaid, instead of being so invested as hereinafter provided, (*d*) shall, from time to time, as the same accrues, be applied to the payment or redemption, at such value as the said council can agree for, or of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, (*e*) to be selected as provided in such order, and the

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(*b*) A surplus beyond the interest may arise from the increase of ratable property, as the rate is based on the last revised or revised and equalized assessment roll at the time of the passing of the by-law. See 340, sub-s. 6, (*c*).

(*c*) Provision is made by sec. 375 for the investment of the excess.

(*d*) See sec. 375 *et seq.*

(*e*) The object of the special rate, is to pay off the debt and interest authorized by the by-law in accordance with the terms of the by-law. Sec. 340, sub-s. 3. The ordinary mode is by annually raising a certain sum for interest and a certain sum for sinking fund or instalment, so as to discharge both principal and interest when payable. If the principal be payable by annual instalments, there will not be such an accumulation to the credit of the sinking fund as if the principal money were payable at the expiration of a fixed period of time. See sec. 342. The annual rate in either case is based on the value of the ratable property at the time of the passing of the by-law according to the last revised or revised and equalized assessment roll. Sec. 340, sub-s. 6 (*c*). There may be therefore an accumulation of money in the nature of surplus to the credit of the fund in advance of what is required to pay the annual obligation under the by-law. Instead of investing the same, provision is by this section made for the appli-

municipal council shall thereupon apply and continue to apply such part of the produce of the special rate at the credit of the sinking fund or special rate accounts, as directed by such order. 46 V. c. 18, s. 376.

Investment of surplus moneys raised on special rates.

375.—(1) If any part of the produce of the special rate levied in respect of any debt, and at the credit of the sinking fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt by reason of no part thereof being yet payable, (*f*) the council shall from time to time, invest the same in government securities, municipal debentures, or in first mortgages on real estate held and used for farming purposes, and being the first lien on such real estate, or in local improvement debentures of the municipality, or in such other manner as the Lieutenant-Governor in Council may by general or special order direct, or in any other debentures of the municipality which may be approved of by the Lieutenant-Governor in Council by such order; and from time to time, as such securities mature, may invest in other like securities; no sum so invested in mortgages shall exceed two-thirds of the value of the real estate on which it is secured according to the last revised and corrected assessment roll at the time it is invested.

(2) The council of such municipality may regulate, by by-law, the manner in which such investments shall be made.

Sinking fund may be used in purchasing unsold debentures.

(3) It shall not be necessary that any local improvement or other debentures of the municipality referred to in this section shall have been disposed of by the council, but the council may apply the sinking fund to an amount equal to the amount of such debentures for the purposes to which the proceeds of such debentures may be properly applicable, and shall hold the debentures as an investment on account of the sinking fund, and deal with the same accordingly. 47 V. c. 32, s. 9.

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cation of the money "to the payment or redemption, at such value as the council can agree for," of any part of the debt, though not payable. This can only be done by order of the Lieutenant-Governor in Council. It is intended that the order shall be a continuing one, for it is declared that the council shall thereupon "apply and continue to apply" the same, as directed by the order. It is felt by the Legislature that the possession of an unproductive surplus is an element of abuse, and provision is made by this and the following sections for the investment or other disposal of it.

(*f*) See note *e* to sec. 374.

Investment of sinking fund.

376. Any council may direct, by by-law, that any surplus moneys in the hands of the treasurer, and not specially appropriated to any other purpose, shall be credited to the sinking fund account of any debenture debt of the municipality, and the council may invest such sinking fund account in any of the securities named in, and according to the provisions of, the preceding section. 46 V. c. 18, s. 378.

Council may apply other funds towards such debts.

377. Every such council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the treasury, or any money raised by additional rate (*h*) ; and any money so appropriated shall be carried to the credit of the sinking fund of the debt, or in payment of any instalment accruing due. (*i*) 46 V. c. 18, s. 379.

Certain moneys may be set apart for educational purposes.

Investment of same.

378—(1) A municipal corporation having surplus moneys derived from the "The Ontario Municipalities Fund," or from any other source, (*k*) may, by by-law, set such surplus apart for educational purposes, (*l*) and invest the same (*m*) as well as any other moneys held by such municipal corporation for, or by it lawfully appropriated to, educational purposes, in public securities of the Dominion, municipal debentures, or in first mortgages on real estate, held and used for farming purposes, and being the first lien on such real estate, and

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(*h*) The rate for the payment of a debt created by by-law is calculated according to the existing value of the taxable property as shewn by the last revised or revised and equalized assessment roll. Sec. 340, sub-s. 6 (6). But by this section the council of the municipality is empowered to supplement the proceeds of the rate by the appropriation thereto of the moneys specified.

(*i*) See note *e* to sec. 374.

(*k*) The original of this section was, by the Act of 1866, restricted in its operation to the Upper Canada Municipalities Fund. It was by the Act 31 Vic. c. 30, sec. 27, extended to moneys derived from other sources,

(*l*) Where a township council enacted that the interest arising on the invested funds for schools in a township, should be apportioned on, and according to the number of days the schools had been open or taught in each half year, the Court refused to quash the by-law. *In re Storms and Ernestown*, 39 U. C. Q. B. 353.

(*m*) Where the money has been invested on mortgage in the event of the mortgagor making default, the corporation may, notwithstanding the provisions of the Statutes of Mortmain, have a decree of foreclosure. *Orford* v. *Bailey*, 12 Grant, 276.

from time to time, as such securities mature, may invest in other like securities, or in the securities already authorized by law, as may be directed by such by-law or by other by-laws passed for that purpose.

Proviso as to investment.

(2) No sum so invested shall exceed two-thirds of the value of the real estate on which it is secured, according to the last revised and corrected assessment roll, at the time it is so invested. (*n*) 46 V. c. 18, s. 380.

Loans to school trustees.

379. Any municipal corporation having surplus moneys set apart for educational purposes, may, by by-law, invest the same in a loan or loans to any board of school trustees within the limits of the municipality, for such term or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and may be set forth in such by-law; (*o*) or may by by-law grant any portion of such moneys or other general funds by way of gift to aid poor school sections within the municipality. (*p*) 46 V. c. 18, s. 381.

Aid to poor school sections.

(*n*) This is directed against possible abuses, and intended to secure safety of investment. The direction that the sum invested is not to exceed two-thirds of the value of the real estate on which it is secured according to the last revised and corrected Assessment Roll at the time the money is invested, is deserving of careful attention. Municipal councillors are trustees for the ratepayers, and if they disregard the safeguard of this section, they are made responsible. See sec. 380.

(*o*) It should be noted that the first part of this section only applies to a corporation "having surplus moneys set apart for educational purposes." The first part is a copy of section 275 of the Act of 1866, Before section 275 of the Act of 1866, which was taken from sec. 4 of Stat. 27 Vict. cap. 17, each township had power to grant to the trustees of any school section, on their application, authority to borrow any sums of money necessary for specified purposes in respect to school sites, school houses, and their appendages, or for the purpose or erection of a teacher's residence; and in that event was required to cause to be levied in each year upon the taxable property in the section a sufficient sum for the payment of the interest on the sum so borrowed, and a sum sufficient to pay off the principal within ten years. Con. Stat. U. C. c. 64, s. 35. By the present section, the municipal corporation may itself lend money to the school trustees within the limits of the municipality, "for such term or terms and at such rate or rates of interest as may be agreed upon, &c., and set forth in such by-law." See *In re Doherty and Toronto*, 25 U. C. Q. B. 409.

(*p*) The latter part is not, like the first part of the section, restricted to moneys set apart for educational purposes. The grant may be of such last mentioned moneys, "or *other* general funds, by way of gift to aid poor school sections within the municipality."

No members of corporation to be party to investment.

380. No member of a municipal corporation shall take part in or in any way be a party to the investment of such moneys as are mentioned in this Act, by or on behalf of the corporation of which he is a member, otherwise than is authorized by this Act, or by any other law in that behalf made and provided, (*q*) and such person so doing shall be held personally liable for any loss sustained by the corporation. (*r*) 46 V. c. 18, s. 382.

Liability for loss.

Municipalities indebted to Municipal Loan Fund to make annual returns to Provincial Treasurer.

381. The treasurer of any municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall so long as any part of such sum, or of the interest thereon, remains unpaid by the municipality, transmit to the Treasurer of Ontario, on or before the 15th day of January in every year, (*s*) a return, certified on the oath of the treasurer before some Justice of the Peace, containing the amount of taxable property in the municipality according to the then last assessment roll or rolls; a true account of all the debts and liabilities of the municipality, for every purpose, for the then last year; and such further information and particulars with regard to the liabilities and resources of the municipality as the Lieutenant Governor in Council may from time to time require, under a penalty, in case of neglect or refusal to transmit the return, account, information or particulars, of $100, to be recovered with costs as a debt due to the Crown. (*t*) 46V. c. 18, s. 383.

Penalty for default.

Every council to make a yearly report

382. Every council shall, on or before the 31st day of January in each year, (*u*) under a penalty of $20 in case

(*q*) The members of the municipal council are agents for the people whom they represent, with a limited authority in regard to the borrowing and lending of money, as well as other matters. They are also trustees for the people, and, being so, are not allowed to make a profit out of the trust fund, or deal with it otherwise than as directed by the Legislature. See sec. 431 and notes thereto.

(*r*) Trustees exceeding their powers as to the mode of investment where loss is the result are very commonly made personally liable for the amount of the loss. See *Fry* v. *Tapson*, 28 Ch. D. 268; *Smethurst* v. *Hastings*, 30 Ch. D. 490: *In re Olive*, *Olive* v. *Westerman*, 34 Ch. D. 70.

(*s*) See note *g* to sec. 248.

(*t*) In any action for the recovery of such a penalty, it is sufficient to prove by any one witness or other evidence, that such return, &c., ought to have been transmitted by the defendant as alleged on the part of the Crown; and the onus of proving that the same was so transmitted is to rest upon the defendant. Rev. Stat. c. 20, s. 15.

(*u*) See note *g* sec. 248.

of the corporation debts to the Lieut-Governor, etc.

of default, to be paid to the Treasurer of Ontario, (*v*) transmit to the Lieutenant-Governor through the Provincial Secretary, an account, in such form as may be prescribed from time to time by the Lieutenant-Governor in Council, of the several debts of the corporation, as they stood on the 31st day of December preceding, (*w*) specifying in regard to every debt of which a balance remained due at that day :

What such report must show.

1. The original amount of the debt;

2. The date when it was contracted ;

3. The days fixed for its payment;

4. The interest to be paid therefor;

5. The rate provided for the redemption of the debt and interest;

6. The proceeds of such rate for the year ending on such 31st day of December ;

7. The portion (if any) of the debt redeemed or paid during such year;

8. The amount of interest (if any) unpaid on such last mentioned day; and

9. The balance still due of the principal of the debt. 46 V. c. 18, s. 384.

DIVISION II.—COMMISSION OF INQUIRY INTO FINANCES.

When granted. *Sec.* 383.
Expenses of. *Sec.* 384.

When a commission of inquiry may issue.

383. In case one-third of the members of any council, or thirty duly qualified electors of the municipality, (*a*) petition

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(*v*) See note *t* to sec. 381.

(*w*) The design of this section is yearly to inform the Executive Government of the financial condition of each municipality.

(*a*) The power conferred is one of inquiry, and may be of great advantage to municipalities, by enabling the commissioners to enforce the attendance of witnesses and compel them to give evidence. *Per* Richards, J., *In re Eldon and Ferguson*, 6 U. C. L. J. 209. It is a public inquiry conducted under a public Act of Parliament, which says nothing about compensation to witnesses, and it would seem that persons called before the commissioners are not entitled to compensa-

for a commission to issue under the Great Seal, to inquire into the financial affairs of the corporation and things connected therewith, and if sufficient cause is shewn, the Lieutenant-Governor in Council may issue a commission accordingly, and the commissioner or the commissioners, or such one or more of them as the commission empowers to act, shall have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases. (*b*) 46 V. c. 18, s. 385.

Expenses of such commissions.

384. The expenses to be allowed for executing the commission shall be determined and certified by the Treasurer of Ontario, and shall thenceforth become a debt due to the commissioner or commissioners by the corporation, and shall be payable within three months after demand thereof made by the commissioner, or by any one of the commissioners, at the office of the treasurer of the corporation. (*c*) 46 V. c. 18, s. 386.

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tion for expenses or loss of time any more than in the case of a prosecution for a misdemeanour. *Per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 567. Inquiries into other than financial matters are authorized by sec. 477. If it be alleged and proved that the councillors whose duty it is to give all necessary and reasonable information, maliciously conspired to withhold information, and contrived and intended to cause expense and damage to the corporation, by increasing the costs and expenses of the Commission, and throw upon the corporation any costs (sec. 384), and it be charged and proved that the Councillors, in pursuance of such contrivance and intention, misconducted themselves to the damage of the corporation, an action may be maintained against them at the suit of the corporation for recovery of damages. *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 556 ; and in such an action, where it was shewn that the clerk absented himself and kept back the books, &c., in collusion with the defendants, and that, in consequence, the costs of the Commission, which otherwise would not have exceeded £75 or £100, were increased to £328, it was held that the sum of £250 damages was not excessive. *S. C.* 18 U. C. Q. B. 31. There is nothing in the section to prevent the corporation from suing for money due them. *Per* Richards, J., *In re Eldon and Ferguson*, 6 U. C. L. J. 209. It would be unreasonable to hold that the power to inquire should deprive the corporation of the right to resort to a more speedy and economical mode of investigating accounts, and of obtaining payment of the amount due when ascertained. *Ib.*

(*b*) It is presumed that witnesses on such an inquiry would not be bound to answer questions tending to criminate them. See note to sec. 477.

(*c*) The expenses to be *determined* by the Treasurer of Ontario. No appeal of any kind is provided for. When determined, the account

Title IV.—Arbitrations.

Div. I.—Appointment of Arbitrators.
Div. II.—Procedure.

Division I. Appointment of Arbitrators.

How appointed. *Secs.* 385-389, 394.
Failure of parties to appoint. *Secs.* 389, 390.
Respecting real property taken by Corporations. *Secs.* 391, 392.
Several interests in the same property. *Secs.* 393, 394.
Award, when to be made. *Sec.* 395.
Persons disqualified from acting as Arbitrators. *Sec.* 396.
Compensation for lands taken or injured. See *Secs.* 483-488.

Appointment how made.

385. The appointment of all arbitrators shall be in writing under the hands of the appointers, (*a*) or in case of a corporation, under the corporate seal, and authenticated in like manner as a by-law. (*b*) 46 V. c. 18, s. 387.

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may be certified. When certified, the amount of it becomes a debt due by the municipality to the commissioner or commissioners, payable "*within* three months after demand, &c." The commissioners are entitled to recover the money by action after the amount has been determined, certified, and demanded. The plaintiff in such an action is not obliged to prove the regularity of the issue of the commission. *Bristow* v. *Cornwall*, 36 U. C. Q. B. 225.

(*a*) Decided cases shew the great practical difficulty which either party may often have in obtaining possession of the appointment of his opponent's arbitrator when he wishes to make the submission a rule of Court, and the delay, expense and inconvenience to which this difficulty may subject him. A method, it is suggested, may be found to remedy this difficulty. If each party took the precaution, at the time of the reference, of requesting the other party to make the appointment of his arbitrator in duplicate, and if they mutually agree to furnish each other with one of the duplicate parts, and not a mere copy, there seems no reason why, on producing the appointment of his own arbitrator and the duplicate original of his opponent's arbitrator, and properly verifying both of them, the submission might not be made a rule of Court. Russell on Awards, 560.

(*b*) There should, in strictness, be a by-law authorizing the appointment, or the affixing of the seal to the appointment or a by-law delegating the appointment to the head of the council. See sec. 386. But the municipal council may so act as to be estopped from taking formal objections to the mode of appointment. See *In re Eldon and Ferguson*, 6 U. C. L. J. 207; and *Wilson and Port Hope*, 10 U. C. Q. B. 405. The appointment, when properly authorized,

Council, or head thereof, may appoint for corporation.

386. The arbitrators on behalf of a municipal corporation shall be appointed by the council thereof, or by the head thereof, if authorized by a by-law of the council. (*c*) 46 V. c. 18, s. 388.

Either party may appoint an arbitrator and give notice to opposite party.

387. In cases where arbitration is directed by this Act, either party may appoint an arbitrator, and give notice thereof in writing to the other party, calling upon such party to appoint an arbitrator on behalf of the party to whom such notice is given. (*d*) A notice to a corporation shall be given to the head of the corporation. 46 V. c. 18, s. 389.

Third arbitrator to be appointed.

388. The two arbitrators appointed by or for the parties shall within seven days from the appointment of the lastly named of the two arbitrators (*f*) appoint in writing a third arbitrator. (*g*) 46 V. c. 18, s. 390.

When more than two municipalities interested.

389. In cases where more than two municipalities are interested, each of them shall appoint an arbitrator, and in such case, if there is an equality of arbitrators, the arbitrators so

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should not only be under the seal of the corporation, but be signed by the head of the corporation and by the clerk of the corporation. Such is the mode of authenticating a by-law. See sec. 288.

(*c*) As a rule, an arbitrator, to represent a municipal council, must be appointed by that council; the exception is when the council, by by-law, deputes that power to the head of the council. See preceding note.

(*d*) The notice must be in writing. It should state the object of the arbitration, name the arbitrator appointed by the party giving the notice, and call upon the other party to name his arbitrator. It should be express and absolute. Where B. had given notice to a railway company that "it was his intention" to appoint M. as arbitrator, and if they failed for fourteen days to appoint one, he would appoint him to act for both parties, and M. did so act, the Court refused to enforce the reward. *Bradley* v. *London and North Western R. W. Co.*, 5 Ex. 769.

(*f*) As to computation of time, see note *b* to sec. 185.

(*g*) It is a common error to look upon a *third* arbitrator as an umpire. The difference between a third arbitrator and an umpire is that the former is appointed *before* the arbitration proceeds, and the latter after the arbitrators have entered upon the the reference and are unable to agree. There are other distinctions unnecessary to be mentioned here. A by-law to close up and grant to a company a portion of a street which provided for arbitration by the Mayor and by two persons, one appointed by the company and one by the applicant, was held invalid. *Re Laplante and Peterborough*, 5 O. R. 634.

appointed shall appoint another arbitrator, (*h*) or in default, at the expiration of twenty-one days after such arbitrators have been appointed, the Lieutenant-Governor in Council may, on the application of any one of the municipalities interested, appoint such arbitrator. 46 V. c. 18, s. 391.

Provision in case of neglect to appoint.

390. In case of an arbitration between municipal corporations, if for twenty-one days, or in case the arbitration is respecting drainage works, then, if for twenty days after having received such notice, the party notified omits to appoint an arbitrator; (*i*) or if for seven days after the second arbitrator has been appointed, the two arbitrators omit to appoint a third arbitrator, then, in case the arbitration is between townships or between a township and a town or an incorporated village, the Judge of the County Court of the county within which the townships, town or incorporated village are or any of them is situate, or in case the arbitration is between other municipalities, the Lieutenant-Governor in Council may appoint an arbitrator for the party or arbitrators in default, or a third arbitrator, as the case may require. 46 V. c. 18, s. 392.

(*h*) This section contemplates the difficulty arising from the arbitrators disagreeing where each represents a particular municipality, and there is an equality of arbitrators. In such a case there ought to be no difficulty. But arbitrators sometimes, instead of appreciating their position and acting as impartial judges of the matters in dispute, act as advocates, if not as partizans for the party appointing them. No decision would generally be the result if there were no provision for the appointment of an additional arbitrator. The additional arbitrator, under this section, is to be appointed by the arbitrators first appointed. If they, from any cause, fail to do so, the Lieutenant-Governor may, on a proper application, appoint such additional arbitrator. Although no direction is given as to the mode of appointment in either case, it would be well that it should be made in writing.

(*i*) It is the duty of each party to appoint *one* arbitrator, and give notice thereof in writing to the other party. It is the duty of the two arbitrators so appointed, in seven days after the appointment of the second arbitrator, to appoint a third arbitrator. Default may be made in either particular, and provision is here made therefor. If the arbitration is between townships, or between a township and town, or incorporated village, the Judge of the county in which the townships, town, or incorporated village are or any of them is situate, may appoint the second or third arbitrator, as the case may require; but if the arbitration is between other municipalities, such as counties or a county and a city or town, or a city and town, the appointment must be made by the Lieutenant-Governor in Council. The appointment ought, though not so directed, to be in writing. See note *d* to sec. 387.

Arbitration as to real property taken or injured by municipal corporations.

391. In case of an arbitration between a municipal corporation and the owners or occupiers of, or other persons interested in real property entered upon, taken or used by the corporation in the exercise of any of its powers, or injuriously affected thereby, (*j*) if, after the passing of the by-law, any person interested in the property appoints and gives due notice to the head of the council of his appointment of an arbitrator to determine the compensation to which such person is entitled, (*k*) the head of the council shall, if authorized by by-law, (*l*) within seven days (*m*) appoint a second arbitrator, and give notice thereof to the other party, and shall express clearly in the notice what powers the council intends to exercise with respect to the property, describing it. (*n*) 46 V. c. 18, s. 393.

Provision owner of property fails to name arbitrator.

392. In such last mentioned arbitration, if after service on the owner or occupier of, or person so interested in, the property of a copy of a by-law, certified to be a true copy under the hand of the clerk of the council, the owner or occupier or person so interested omits for twenty-one days to name an arbitrator, and give notice thereof as aforesaid (*o*),

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(*j*) See sec. 483.

(*k*) A difference is to be observed as to arbitration between municipal corporations and arbitrations between a municipal corporation and individuals. In the latter case the individual appoints his arbitrator, and gives due notice thereof to the head of the council. When he does so, the head of the council is required, if authorized by by-law, within seven days, to appoint a second arbitrator, and, besides, to give notice thereof to the individual; in which notice must be clearly expressed "what powers the council intends to exercise with respect to the property, describing it." For *form* of mandamus to the head of a municipal council to appoint an arbitrator, see *Reg.* v. *Perth*, 14 U. C. Q. B. 156.

(*l*) See note *c* to sec. 386.

(*m*) As to computation of time, see note *b* to sec. 185.

(*n*) See notes to sec. 483.

(*o*) The first step is to be taken by the council, who are required to cause to be served on the owner or occupier of, or person interested in, the land to be affected a copy of the by-law affecting it, certified to be a true copy, under the hand of the clerk of the council. Then the initiative as to arbitration is to be taken by the owner so served. It is his duty, within twenty-one days after service, to name an arbitrator and give notice thereof to the council in the manner prescribed by the last clause. If he allow the twenty-one days to expire without doing it, then the council may take the initiative by appointing the first arbitrator, and giving notice of his appointment. If this is done the owner of the land is required, within *seven* days

the council or the head, if authorized by by-law, (*p*) may name an arbitrator on behalf of the council, and give notice thereof to the owner, occupier or person so interested, and the latter shall, within seven days thereafter, name an arbitrator on his behalf. 46 V. c. 18, s. 394.

Where several parties have distinct interests in the same property.

393. In case there are several persons having distinct interests in property in respect of which the corporation is desirous of exercising the powers referred to in section 391 under a by-law in that behalf passed, whether such persons are all interested in the same piece of property, or some or one in a part thereof, and some or one in another part thereof, and in case the by-law or any subsequent by-law provides that the claims of all should, in the opinion of the council, be disposed of by one award (*q*) such persons shall have twenty-one (instead of seven) days to agree upon and give notice of an arbitrator jointly appointed in their behalf (*r*) before the County Court Judge shall have power to name an arbitrator for them. 46 V. c. 18, s. 395.

County court judge to appoint arbitrator in certain cases.

394. If such owner, occupier or person so interested, or the head of such council, whether from want of authority in that behalf, or otherwise, (*s*) omits to name an arbitrator within seven days after receiving notice to do so, (*t*) or if the persons having distinct interests as aforesaid (*u*) omit to name an arbitrator within twenty-one days after receiving notice to do so, or if the two arbitrators do not within seven days from the appointment of the lastly named of the two arbitrators agree on a third arbitrator, or if any of the arbitrators refuse or neglect to act, (*v*) the Judge of the County

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thereafter, to name the second arbitrator. As to computation of time, see note *b* to sec. 185.

(*p*) See note *c* to sec. 386.

(*q*) Where several persons are interested (as in the opening of a new road, &c.), there may be an arbitration under this Act as to each person interested, or, in the option of the council, an arbitration as to all, and the claims of all be determined by one award. In the latter case, instead of seven days only allowed by sec. 394, twenty-one days are given.

(*r*) See note *d* to sec. 387.

(*s*) See note *c* to sec. 386.

(*t*) As to computation of time, see note *b* to sec. 185.

(*u*) See sec. 393.

(*v*) "*Any* of the arbitrators." This may be taken to refer to the

Court of the county in which the property is situated, on the application of either party, shall nominate as an arbitrator (*w*) a fit person resident without the limits of the municipality in which the property in question is situated to act for the party failing to appoint, or as such third arbitrator, or in the stead of the arbitrator refusing or neglecting to act, and such arbitrators shall forthwith proceed to hear and determine the matters referred to them. 46 V. c. 18, s. 396.

Time for making award.

395. In any of the cases herein provided for, (*x*) the arbitrators shall make their award within one month after the appointment of the third arbitrator. (*y*) 46 V. c. 18, s. 397.

Persons disqualified from acting as arbitrators.

396.—(1) No member, officer, or person in the employment, of any corporation which is concerned or interested in any arbitration, (*z*) nor any person so interested, shall be ap-

refusal or neglect of any arbitrator mentioned in any of the preceding sections, from section 385, to act, for in none of them is there any such provision made for the neglect or refusal of an arbitrator to act. The three arbitrators must continue to act from the time of their appointment until the award has been made. *In re Smith* v. *Corporation of Plympton*, 12 O. R. 35.

(*w*) Though not so directed, it would be convenient that the nomination should be in writing.

(*x*) See sec. 385 *et seq.*

(*y*) It has been held that the Court has power to enlarge the time for making an award although the same has not been made "within one month after the appointment of the third arbitrator," as required by this section. *In re City of Toronto and Scott*, 8 P. R. 318. See also *Township of Thurlow* v. *Township of Sidney*, 29 Grant 497; *Re Muskoka and Gravenhurst*, 6 O. R. 352. But see *In re Smith nd Corporation of Plympton*, 12 O. R. 35, where it is said by Cameron, C. J.: "The current of English authority is I think against the validity of an award made after the time fixed by statute. If the statutory limit is exceeded then there is no limit, and the matter would be pending before the arbitrators as long as they refrained from making any award. This certainly would not be what was contemplated by the Legislature." A by-law providing that the award was to be made within one month of the passing of the by-law instead of one month from the appointment of the third arbitrator was held invalid. *Re Laplante and Peterborough*, 5 O. R. 634. The general enactments relating to arbitration apply to awards under this Act. *In re City of Toronto and Scott*, 8 P. R. 318. From the time the arbitrator has made the award his authority ceases. He cannot afterwards make any correction or alteration, even of manifest errors. *Irvine* v. *Elmon*, 8 East. 54; *Ward* v. *Dean*, 3 B. & Ad. 234; *Re Hall* v. *Hinds*, 2 M. & G. 847; *Brooke* v. *Mitchell*, 6 M. & W. 473.

(*z*) An arbitrator should be impartial. If corrupt conduct on the

pointed or act as an arbitrator in any case of arbitration under this Act. 46 V. c. 18, s. 398.

(2) Nothing in this section contained shall prevent the appointment of or disqualify as an arbitrator any person by reason merely that such person is a ratepayer of or within any municipality concerned or interested in the arbitration unless the arbitration relates to drainage under the provisions of this Act, or *The Ontario Drainage Act.* (*a*) 48 V. c. 39, s. 9.

Rev. Stat. c. 36.

DIVISION II.—PROCEDURE.

Oath of Arbitrator. *Sec.* 397.
Time of meeting. *Sec.* 398.
Form of Award. *Secs.* 398, 404.
Registration of Award. *Sec.* 398.
Costs. *Sec.* 399.
Majority to decide. *Sec.* 400.
Evidence. *Sec.* 401.
Award, when adoption by By-law required. *Sec.* 402.
Award, power of Courts to review after adoption. *Sec.* 403.
Award, how made, and jurisdiction of Courts. *Sec.* 404.

Arbitrators to be sworn.

397. Every arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (*a*) (or in case of those who by law affirm, take and sub-

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part of an arbitrator be shown, his award will be set aside. See *Tittenson* v. *Peat*, 3 Atk. 529; *Earle* v. *Stocker*, 2 Vern. 251; *Burton* v. *Knight*, *Ib.* 514; *Morgan* v. *Mather*, 2 Ves. 15; *Emery* v. *Wase*, 5 Ves. 846; *Lonsdale* v. *Littledale*, 2 Ves. 451; *Clarke* v. *Stocken*, 2 Bing. N. C. 651. But mere suspicion of misconduct is not enough. *Crossley* v. *Clay*, 5 C. B. 581; see also *Anon*, 2 Vern. 100; *Goodman* v. *Sayers*, 2 J. & W. 249. In order that there should not be even suspicion as to municipal awards, it is here declared that "no member, officer, or person in the employment of any Corporation which is concerned or interested in any arbitration, nor any person so interested shall be appointed or act as an arbitrator." See *In re Elliot and South Devon R. W. Co.* 2 De G. & Sm. 17.

(*a*) This subsection was passed in consequence of the decision in *In re Muskoka and Gravenhurst*, 6 O. R. 352.

(*a*) The oath is not only to be taken by *every* arbitrator, but to be taken "*before proceeding to try the matter of the arbitration.*" The oath besides, is not only to be taken but subscribed. When taken and subscribed, it is to be filed with the papers of the reference.

scribe the following affirmation) before any Justice of the Peace:

"I (*A. B.*) do swear (*or* affirm) that I will well and truly try the matters referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge. So help me God." Form of oath or affirmation.

46 V. c. 18, s. 399.

398. The arbitrators shall, within twenty days (*b*) after the appointment of the third arbitrator, meet at such place as they may agree upon, (*c*) to hear and determine the matter in dispute, (*d*) with power to adjourn from time to time, and shall make their award in writing, (*e*) and, if the arbitration is respecting drainage works, in triplicate, which shall be binding on all parties, and one copy thereof shall be filed with the clerk of each of the municipalities interested, and one shall, Time of meeting, etc.

(*b*) "If the time for making the award under s. 395 must be regarded as imperative, it is difficult to say that the time for commencing the proceeding, must not also be regarded as imperative. I am inclined, however, to think as it is purely a matter of formal procedure it should be regarded as directory; and the omission to hold the first meeting within 20 days would not made an award made within the month invalid." *Per* Cameron, C. J., *In re Smith and Corporation of Plympton*, 12 O. R. 35. As to computation of time, see note *b* to sec. 185.

(*c*) There is no express direction that the arbitrators shall give to the parties notice of their meetings and an opportunity of being heard; but this is essential, at least to this extent, that whether there has been a formal notice or not, it should appear that the parties had knowledge of the meetings and an opportunity of being heard and producing evidence. *In re Johnston and Gloucester*, 12 U. C. Q. B. 135.

(*d*) An arbitrator is in general, whether of the legal profession or not, the judge of law as well as fact, see *Jupp* v. *Grayson*, 1 C. M. & R. 523; *Young* v. *Walter*, 9 Ves. 364; *Perriman* v. *Steggall*, 9 Bing. 679; *Campbell* v. *Twemlow*, 1 Price 81; *Wilson* v. *King*, 2 C. & M. 689; *Hall* v. *Ferguson*, 4 O. S. 392, and this being so, the Court will be reluctant to set aside the award unless for mistake apparent on the face of it. *Hogge* v. *Burgess*, 3 H. & N. 293; *Hodgkinson* v. *Fernie*, 3 C. B. N. S. 189; *Baguelly* v. *Borthwith*, 4 L. T. N. S. 245, and, unless empowered to set it aside, will not in general remit it back to the arbitrator for reconsideration. *Hogge* v. *Burgess*, 3 H. & N. 293; *Latta* v. *Wallbridge*, 7 U. C. L. J. 207. But as to certain awards, inquiry may be had as to the merits. See sec. 404.

(*e*) In all cases the award is to be in writing. If it were not for this very proper provision, an award by word of mouth might be held sufficient. *Hanson* v. *Leveredge*, Carthew 256; *Rawling* v. *Wood*, Barnes, 54; *Oates* v. *Bromil*, 1 Salk. 75; *Blundell* v. *Brettargh* 17 Ves. 232, 240.

in case the arbitration is respecting drainage works as aforesaid, be filed with the registrar for the registry division in which the lands affected are situate. (*f*) 46 V. c. 18, s. 400.

Costs.

399. The arbitrators shall have power to award the payment by any of the parties to the other of the costs of the arbitration, or of any portion thereof, (*g*) and may either direct the payment of a fixed sum, (*h*) or that the costs should be taxed on either the scale of the High Court, or of the County Courts, in which case the costs shall be taxed by the officer in the county of the proper Court, without any further order, (*i*) and the amount shall be payable one week after taxation. (*j*) Revision by the principal officer at Toronto may be had upon one week's notice and an appeal to a Judge in the usual manner. 46 V. c. 18, s. 401.

Majority to decide.

400. In case of a difference between the arbitrators, the decision of the majority of them shall be conclusive. (*l*) 46 V. c. 18, s. 402.

(*f*) The original in all probability, would be received as evidence on its mere production, and if so, a copy may be received without proof of the original. See *Warren* v. *Deslippes*, 33 U. C. Q. B. 59.

(*g*) Power is given to the arbitrators to award as to costs; but they are under no obligation to do so. See *Mackintosh* v. *Blythe*, 1 Bing. 269; *Young* v. *Gye*, 10 Moore 198. Before this enactment there was no power to award as to costs. *In re Northumberland and Durham and Cobourg*, 20 U. C. Q. B. 283.

(*h*) The Court will not review the discretion as to amount where an arbitrator having power to fix the amount of costs has exercised the power, unless the amount fixed be so excessive as to manifest partiality. *Anon.* 1 Chit. 38; *Shephard* v. *Brand*, Cases Temp. Hard. 53; *Turner* v. *Rose*, 1 Ld. Kenyon, 393.

(*i*) All that the arbitrator has to do, instead of fixing the amount of costs, is to say, "I award costs to" (naming the party), according to the scale of costs of the High Court, or of the County Court, and stating whether he intends his award to apply to all the costs, including the award as well as the reference. In such case the costs must be taxed by the officer of the proper Court without an order of any kind.

(*j*) If the costs be either fixed in the award or be declared subject to taxation the amount, when ascertained, may be enforced in the same manner as any other portion of the award.

(*l*) In the case of an award by several individuals, all should execute at the same time and in the presence of each other, *In re Templeman and Reed*, 9 Dowl. 965; *Wade* v. *Dowling*, 4 E. & B. 43; *Helps* v. *Roblin*, 6 U. C. C. P. 52; *Martin* v. *Kergan*, 2 P. R. 370, and full opportunity should be given to the minority of the arbitrators, if so disposed, to join in the award. *Ib.*

Notes of the evidence adduced to be taken and filed in certain cases.

401. In case of an award under this Act, which does not require adoption by the council, or in case of an award to which a municipal corporation is a party, and which is to be made in pursuance of a submission containing an agreement that this section of this Act should apply thereto, (*n*) the arbitrator or arbitrators shall take, and immediately after the making of the award, shall file with the clerk of the council, for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof; and in case they proceed partly on a view or any knowledge or skill possessed by themselves or any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto. (*o*) 46 V. c. 18, s. 403.

Arbitrators acting on their own knowledge, etc., to put statement thereof in writing.

Award to be binding in certain cases, must be adopted by by-law within a certain time.

402. In case the award relates to property to be entered upon, taken or used as mentioned in section 391, and in case the by-law did not authorize or profess to authorize any entry or use to be made of the property before an award has been made, except for the purpose of survey, or in case the by-law did give or profess to give such authority, but the arbitrators find that such authority had not been acted upon, the award shall not be binding on the corporation unless it is adopted by by-law within six weeks after the making of the award; (*p*) and if the same is not so adopted, the original by-law

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(*n*) Which may be in this form: "It is hereby agreed that section 401 of *The Municipal Act* shall apply to any award made touching or concerning the premises aforesaid."

(*o*) The omission of the written statement required by the latter part of the section is not necessarily a ground for setting aside an award, and it may afterwards be supplied. *In re Colquhoun and Berlin*, 44 U. C. Q. B. 631. The provisions as to taking full notes of the oral evidence, the documentary evidence, or a copy of it, and putting in writing the statement are imperative and failure to comply with them is fatal to the award. *Re Albemarle and Eastnor*, 46 U. C. Q. B. 183. But where there being two councils interested in the arbitration the arbitrators did not know with which clerk to file the evidence and did not file it, it was held that the award was not thereby invalidated. *Re Muskoka and Gravenhurst*, 6 O. R. 352. See also *In re Northumberland and Durham and Cobourg*, 20 U. C. Q. B. 283.

(*p*) A municipal corporation has, by statute, certain powers in regard to roads, drains, &c., and to enter upon and injuriously affect the lands of others which powers may be exercised by by-law. Any award made in reference thereto is dependent on the adoption of the award by by-law within six weeks after its making; and the original by-law is also made dependent on the passing of such second by-law-

shall be deemed to be repealed, and the property shall stand as if no such by-law had been made, and the corporation shall pay the costs of the arbitration. 46 V. c. 18, s. 404.

Power of courts to review awards adopted by councils, etc.

403.—(1) An award not binding upon the council until adoption, as mentioned in the last preceding section, shall, if adopted, be subject to the jurisdiction of the Court, and to review on the merits, at the instance of the person whose property is affected or taken, in the same manner as is provided by the next following section of this Act, in respect of any award not requiring adoption, and the provisions of sections 401 and 404 shall hereafter extend to every such award.

(2) The award may be moved against within one month (excluding vacations) next after the adoption thereof. 47 V. c. 32, s. 10 (1-2).

Award to be made by at least two arbitrators, and subject to jurisdiction of High Court.

404. Every award made under this Act shall be in writing under the hands of all or two of the arbitrators, and shall be subject to the jurisdiction of the High Court, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court; (*r*) and in the cases provided for by section 401, the Court shall con-

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The award is not to be binding on the corporation unless, within the time limited for the purpose, it is adopted by the council. If not so adopted, the original by-law is to be deemed repealed. In this event the corporation is to pay the costs of the arbitration. As to which see sec. 399 and notes thereto.

(*r*) Formerly, there were two kinds of submission that might be made rules of Court: 1. References by rule of Court, Judge's order, and order of Nisi Prius. 2. Submissions in writing, by virtue of the statute 9 & 10 Will. III. ch. 15, where they contain an agreement to the effect that they may be made rules of Court. These were extended by the Common Law Procedure Act, 1856, s. 97, which enacted that "Every agreement or submission, whether by deed or instrument, not under seal, may be made a rule of one of the Superior Courts of Law or Equity in Upper Canada, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should *not* be made a rule of Court," &c. This provision is in substance re-enacted in sec. 13 of Rev. Stat. c. 53. The effect of this is to place submissions under this section on the same footing as any of the foregoing described submissions. *In re Brant and Waterloo*, 19 U. C. Q. B. 450; *In re Eldon and Ferguson*, 6 U. C. L. J. 207. The effect of making any award under this Act subject to the jurisdiction of the High Court, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court, appears to be to bring all such submissions under the statute of 9 &

sider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award or remit the matters referred, or any of them, from time to time, to the consideration and determination of the same arbitrators, or to any other persons whom the Court may appoint, as prescribed in *The Act respecting Arbitrations and References*, and fix the time within which such further or new award shall be made, or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to require. (*s*) 46 V. c. 18, s. 405.

Powers of the Courts in such matters.

Rev. Stat. c 53.

Title V.—Debentures and other Instruments.

To be under seal and bear signature of head. *Sec.* 405.
Railway and bonus debentures. *Sec.* 406.
Defects in form. *Secs.* 407, 408.
Local Improvement Debentures. *Sec.* 409.
Transfer of Registered Debentures. *Secs.* 410-412.
Councils Borrowing for Current expenses. *Sec.* 413.
No issue under $100. *Sec.* 414.

405. All debentures and other instruments duly authorized to be executed on behalf of a municipal corporation shall,

Debentures, bonds, &c., how to be executed.

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10 Will. III. cap. 15, and to give the Courts power to review the awards, and if necessary, to enforce the performance of them. The ordinary remedy by action is of course open to any party to an award under this section. See *Harpel* v. *Portland*, 17 U. C. Q. B. 455. In such an action it was held no objection to the declaration that it was upon a submission to three arbitrators, while two only executed the award, for the statute authorizes two to act, and makes their award valid. *Ib.* Under a plea of no award it has been held that defendants cannot dispute the arbitrator's authority to award a portion of the sum awarded. *Hodgson* v. *Whitby*, 17 U. C. Q. B. 230.

(*s*) The power here given can be reasonably exercised on inspection of the "full notes of the oral evidence given on the reference and also all documentary evidence or a copy thereof," which, under sec. 401 of this Act, the arbitrators are bound to file "for the inspection of all parties interested." It is a more extensive power than usually exercised as to ordinary awards. *In re Howick and Wroxeter*, 12 U. C. L. J. N. S. 64; *Re Albemarle and Eastnor*, 46 U. C. Q. B. 183. Where the evidence is conflicting the Court will not interfere with an award merely because it may think the weight of evidence

unless otherwise specially authorized or provided, be sealed with the seal of the corporation, and be signed by the head thereof, or by some other person authorized by by-law to sign the same, (*a*) otherwise the same shall not be valid, (*b*) and it shall be the duty of the treasurer of the municipality to see that the money collected under the by-law is properly applied to the payment of the interest and principal of the debentures. (*c*) 46 V. c. 18, s. 406.

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to be against the view taken by the arbitrators. *In re Colquhoun and Berlin*, 44 U. C. Q. B. 631.

(*a*) If the head of the council perversely refuse to discharge his duty in this respect, a by-law may be passed providing for the signing of the debentures by some person in his stead,. *Brock* v. *Toronto and Nipissing R. W. Co.*, 17 Grant 425.

(*b*) It has been held that a debenture issued by a municipal council, under its coporate seal, and signed by the head of the corporation, for the payment of a debt due or loan contracted under a by-law which does not provide by special rate for the payment of the debt or loan, does not estop the municipal corporation from setting up, as a defence to an action on the debentures, the invalidity of the by-law: *Mellish* v. *Brantford*, 2 U. C. C. P. 35; See further, *Thomas* v. *Richmond*, 12 Wall. (U.S.) 349; *Halstead* v. *Mayor, &c.*, 3 Comst. (N. Y.) 430; *Hodges* v. *Buffalo*, 2 Denio. (N.Y.) 110; *Boom* v. *Utica*, 2 Barb. (N.Y.) 104; *Anthony* v. *Inhabitants*, 1 Metc. (Mass.) 284, and may file a bill in equity for the cancellation of securities illegally issued. *Pulaski County* v. *Lincoln*, 4 Eng. (Ark.) 320; *Trustees &c.* v. *Cherry*, 8 Ohio St. 564. See further, note *m* to sec. 410. A person negotiating the sale of a municipal debenture is not answerable that the municipality will pay the amount secured by the debenture. *Sceally* v. *McCallum*, 9 Grant 434. Where, therefore, a township municipality, in pursuance of the Municipal Corporation Act of 1849, passed a by-law for the purpose of granting a loan to the Port Burwell Harbour Company, and issued debentures thereunder which were subsequently declared to be illegal in consequence of the road company not having been properly constituted, the Court of Chancery, in the absence of any proof of fraud, refused to order one of the directors of the road company to refund the amount paid to him upon the sale of one of such debentures. *Ib.*

(*c*) The latter part of this section, like section 348, is intended for the protection of creditors. The duty of the treasurer to see that the money collected under the by-law is properly applied is made imperative, and no subsequent by-law or resolution of the council would in law be any excuse for the neglect of that duty. If the by-law authorize the loan for a special purpose only, the treasurer could not, without disregarding his plain duty, apply the money to any other purpose. *Grier* v. *Plunket*, 15 Grant 152. But where the misapplication had been actually made before the filing of a bill by a ratepayer complaining of the misapplication, and the same had been made in good faith in discharge of a legal liability of the munici-

406. Debentures issued in aid of any railway, or for any bonus, signed or endorsed and countersigned as directed by the by-law (*e*) shall be valid and binding on the corporation without the corporate seal thereto, or the observance of any other form with regard to the debenture than such as may be directed in the by-law. (*f*) 46 V. c. 18 s. 407.

In certain cases, debentures valid without corporate seal, &c.

407. Debentures issued under the authority of any by-law promulgated under this Act or any former municipal Act, (*g*) shall be valid and binding upon the corporation, notwithstanding any insufficiency in form or otherwise of such by-law, or in the authority of the corporation in respect thereof: (*h*) Provided that the by-law has received the assent of the electors where necessary, (*i*) and no successful application has been made to quash the same within the time limited in the notice of promulgation. (*k*) 46 V. c. 18, s. 408.

Debentures valid notwithstanding defect in form.

Proviso.

408. Where debentures were issued prior to the first day, of February, 1883, by a municipality under a by-law passed by such municipality, and the interest on such debentures, and the principal of such thereof (if any) as shall have fallen

Debentures issued before Feb. 1, 1883, on which payment has been made for two years to be valid.

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pality, and the council of the township approved of and adopted the payment, a bill by a ratepayer to compel the treasurer to repay the amount and personally bear the loss was dismissed. *Ib.*

(*e*) See sec. 634 and notes thereto.

(*f*) This is an exception to the general rule, which requires debentures of a municipal corporation to be sealed with the seal of the corporation and signed by the head thereof. Sec. 405. Why such an exception should have been created is difficult to understand.

(*g*) See sec. 329.

(*h*) Were it possible to secure for all money by-laws the stamp of legality, so as to remove all suspicion of informality, irregularity or illegality, the effect would be eminently beneficial. Less room would be left for speculation or trade on the fears of men and contingencies of law, and more stability be imparted to the negotiation of municipal securities ; one consequence of which—and not the least—would be the increase of the market value of the securities. *See* secs. 351 and 352.

(*i*) The debentures are only made binding on the Corporation when this condition is complied with. See *Trust and Loan Co.* v. *Hamilton*, 7 U. C. C. P. 103 ; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121 ; *Crawford* v. *Cobourg*, 21 U. C. Q. B. 113 ; see further, note *b* to sec. 405.

(*k*) See sec. 329 and notes.

due, has been paid for the period of two years or more, by the municipality, the by-law and the debentures issued thereunder, or such thereof as may yet be unpaid, shall be valid and binding upon the corporation, and shall not be quashed or set aside on any ground whatever. 46 V. c. 18, s. 409. *See sec.* 352.

Form of local improvement debentures.

409. Every debenture issued under section 612 of this Act or under the provisions of any other Act relating to the issue of debentures for local improvement purposes, shall bear on its face the words "*Local Improvement Debenture*," and shall contain a reference, by date and number, to the by-law under which it is issued.

Consolidation.

Provided always, that (in order to obviate a difficulty which has been found to prevail in negotiating such local improvement debentures, in consequence of many of the same having to be issued for small and broken amounts), councils may, from time to time, after the passage of the several by-laws covering the several amounts required for particular local improvements as therein specified, and without in any way affecting the liens on the lands therein named and to be improved thereby, further pass a collective or cumulative by-law consolidating such several amounts, and issue the required debentures in a general consecutive issue under such consolidated by-law, apportioning, nevertheless, the amount raised thereby, and crediting each service with the amount previously estimated and named for the same under the individual by-law passed in the first instance;

And for the purpose of more readily carrying this proviso into effect, councils desiring to avail themselves of the same, shall insert a clause in such individual by-laws, intimating that the amount of debentures to be issued thereunder is subject to consolidation, and in such case it shall be sufficient to state in said individual by-laws that the said amount of debentures to be issued thereunder shall be issued at so many years from the date of issue of the same, without defining a specific date; and provided further that no consolidated debentures shall be issued, covering any debentures which may have been issued or sold under any original by-law. (*l*) 46 V. c. 18, s. 410.

(*l*) The requirements contained in this section are in addition to the ordinary requirements. The purpose of the section is to distinguish debentures which are secured only on particular localities in a muni-

410. Debentures to be issued by any municipal council may contain a provision in the following words: Mode of transfer may be prescribed

"This debenture, or any interest therein, shall not, *after* a certificate of ownership has been endorsed thereon by the Treasurer of this municipal corporation, be transferable, (*m*) except by entry by the treasurer or his deputy in the Debenture Registry Book (*n*)

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cipality from those which have all the liable property of the municipality as security.

(*m*) "Municipal Bonds, notwithstanding they are under seal, are clothed with all the attributes of negotiable or commercial paper, pass by delivery or endorsement and are not subject to equities (where power to issue them exists) in the hands of holders for value before due without notice. Such bonds usually have coupons attached which partake of the nature of the bond, are likewise negotiable, may be detached and held saparately from the bond and the holder may sue thereon in his own name without producing or being interested in the bonds to which they were originally attached. Such securities are made to raise money by their sale and this object would be defeated if they were subject to equities (where the power to issue exists) in the hands of *bona fide* holders." *Dillon* on Municipal Corporations, 3rd ed. s. 486. Indeed, warrants or orders of Municipal Corporations have been held in the United States to be so far negotiable as to render persons endorsing them liable as endorsers. *Ib.* 489. The fact that a debenture was, when duly signed and sealed, feloniously stolen from the corporation and transferred to the plaintiff, a *bona fide* holder, for value, was held to afford no defence. *Trust and Loan Co.* v. *Hamilton*, 7 U. C. C. P. 98; see further *Seybill* v. *National Currency Bank*, 13 Am. 583; *Dinsmore* v. *Duncan*, 15 Am. 534; *Deming* v. *Inhabitants of Houlton*, 18 Am. 253 and note thereto; *Boyd* v. *Kennedy*, 20 Am. 376. Holders for value, without notice of the equities between the original parties, are not bound by such equities. *In re Imperial Land Co. of Marseilles*, L. R. 11 Eq. 478. Where a corporation issues debentures, knowing they may be assigned, the corporation may be estopped as against the assignee from setting up, that the debentures were illegally issued. *Webb* v. *Herne Bay*, L. R. 5 Q. B. 642. By an Act of Parliament commissioners were appointed who were to expend money in improving a town. They were authorized to levy rates on the town and to borrow money on the security of the rates, giving bonds for the money so borrowed, of which £100 at the least should be chosen by lot and paid off every year. Interest on the bonds had been duly paid, and, except in two years, £100 had been paid off every year, but more than £15,000 remained on the security of the bonds. Held, that holders of such bonds to the amount of £800 were not entitled to the immediate payment out of rates or to a receiver of the rates. *Preston* v. *Great Yarmouth*, L. R. 7 Chy. 655; see further, *Crouch* v. *Credit Foncier*, L. R. 8 Q. B. 374; *Bissell* v. *Kankakee*, 16 Am. 554.

(*n*) The design of this section is so far to control the negotiability of the debenture as to enable the municipal corporation at any time and at all times to have a knowledge of the holder of it. This is in

of the said corporation at the town (*or* Village) of , *or to the like effect.*

46 V. c. 18, s. 411.

Debenture registry book.

411. The treasurer of every municipality issuing any debentures containing the provision in the last section mentioned, shall open and keep a debenture registry book, in which he shall enter a copy of all certificates of ownership of debentures, which he may give, and also every subsequent transfer of such debenture; (*p*) such entry shall not be made except upon the written authority of the person last entered in such book as the owner of such debenture, or of his executors or administrators, or of his or their lawful attorney, which authority shall be retained by the treasurer and duly filed. (*q*) 46 V. c. 18, s. 412.

Registered debenteres transferred by entry, &c.

412. After the certificate of ownership has been endorsed as aforesaid, the debenture shall only be transferable by entry, by the treasurer of the municipality or his deputy, in such debenture registry book, from time to time, as transfers of such debenture are authorized by the then owner thereof, or his lawful attorney. (*r*) 46 V. c. 18, s. 413.

Council may authorize the borrowing of

413. The council of every municipality may authorize its head, with the treasurer thereof, under the seal of the cor-

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the first instance effected by a declaration against general negotiability on the face of the debenture, in the form given in the section. After the endorsement of ownership by the treasurer, no legal transfor of the debenture can be made, except by entry by the treasurer or his deputy in the debenture registry book. The provision is analogous to that against transfer of property in a ship, except in a particular mode, after certificate of ownership granted. See *Sherwood* v. *Coleman*, 6 U. C. Q. B. 614; *Orsey* v. *Mounteney*, 9 U. C. Q. B. 382, *Chisholm* v. *Potter*, 11 U. C. C. P. 165; *Wilson* v. *Cameron*, 22 U. C. C. P. 108. The effect of the provision when applied, will be to a great extent to impede the negotiability of the debenture to which it relates.

(*o*) Or to the like effect—See note *r* to sec. 330.

(*p*) See note *n* to sec. 410.

(*q*) No provision is made for the payment of any fees to the treasurer for the services directed. The rule is, that a public officer is not entitled to payment for duties imposed upon him by statute in the absence of an express provision for such payment. See *Jones* v. *Carmarthen*, 8 M. & W. 805; *Askin* v. *London*, 1 U. C. Q. B. 292, *Re Pringle and McDonald*, 10 U. C. Q. B. 254; *Reg.* v. *Cumberlege*, 36 L. T. N. S. 700.

(*r*) See note *n* to sec. 410.

poration, to borrow from any person or bank such sums as may be required to meet the then current expenditure of the corporation, until such time as the taxes levied therefor can be collected, (*s*) and the council shall by by-law regulate the amounts to be so borrowed, and the promissory note or notes, covenant or agreement to be given in security therefor. (*t*) 46 V. c. 18, s. 414.

sums to pay current expenses.

414. No council shall, unless specially authorized so to do, make or give any bond, bill, note, debenture or other undertaking for the payment of a less amount than $100; and any bond, bill, note, debenture or other undertaking issued in contravention of this section, shall be void: (*u*) 46 V. c. 18, s. 415.

Without special authority, no bond, &c., to be given for less than $100.

Proviso.

(*s*) It is doubtful whether, in the absence of an express authority to borrow a municipal corporation has the power to borrow even to meet current expenditure. See note *k* to sec. 340. The power to give a promissory note for money borrowed was also a subject of doubt. See *Attorney-General* v. *Lichfield*, 13 Sim. 547; see further, note *u* to sec. 414. In the past, some municipalities have assumed to borrow money from banks, and to give promissory notes for payment; but the Legislature, to remove all doubt, has in express language conferred the power, subject to certain reasonable limitations.

(*t*) The power is to borrow to meet "the current expenditure of the corporation," which, under ordinary circumstances, should be met by the collection of taxes. So the duration of the loan is only to be "until such time as the taxes levied therefor can be collected." The security to be given for the loan is a promissory note. The power is to be exercised only by by-law. The by-law must regulate: 1. The amount to be borrowed. 2. The promissory notes to be given as security therefor.

The corporation cannot make a legal promissory note for a less sum than $100. See sec. 414.

(*u*) It has been said that the power to execute bonds, deeds and covenants is inseparable from the existence of all corporations, public and private. See *Commonwealth* v. *Pittsburg*, 41 Pa. St. 279; see also *Douglas* v. *Virginia City*, 5 Nev. 147. "Generally speaking, all Corporations are bound by a covenant under their corporate seal, properly affixed, which is the legal mode of expressing the will of the entire body, and are bound as much as an individual by his own deed. . . . But where a corporation is created by an Act of Parliament, *for particular purposes with special powers*, then indeed another question arises, their deed, though under their corporate seal and that regularly affixed, does not bind them if it appear by the express provisions of the statute creating the corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultra vires*; that is, that the Legislature meant that such a deed should not be made." *Per* Parke B., in *South Yarmouth R. Co.*

TITLE VI.—RESPECTING THE ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

DIV. I.—JUSTICES OF THE PEACE.
DIV. II.—PENALTIES.
DIV. III.—WITNESSES AND JURORS.
DIV. IV.—CONVICTIONS UNDER BY-LAWS.
DIV. V.—EXECUTION AGAINST MUNICIPAL CORPORATIONS.
DIV. VI.—TENDER OF AMENDS.
DIV. VII.—CONTRACTS WITH MEMBERS OF COUNCIL VOID.
DIV. VIII.—POLICE OFFICE AND POLICE MAGISTRATE.
DIV. IX.—BOARD OF COMMISSIONERS OF POLICE AND POLICE FORCE IN CITIES AND TOWNS.
DIV. X.—COURT HOUSES, GAOLS, AND PLACES OF IMPRISONMENT.
DIV. XI.—INVESTIGATION OF CHARGES OF MISCONDUCT IN RELATION TO MUNICIPAL MATTERS. See sec. 477.
DIV. XII.—WHEN MAYOR MAY CALL OUT *Posse Comitatus.*

DIVISION I.—JUSTICES OF THE PEACE.

Justices of the Peace, Who are ex-officio. *Sec.* 415.
Jurisdiction of Mayors of Cities and Towns. Sec. 416.
Qualification and oath of ex-officio *Justices. Sec.* 417.
Jurisdiction of Justices in cases under By-laws. Secs. 418, 419.

415. The head of every council, and the reeve of every town, township and incorporated village, shall, *ex officio*, be Justices of the Peace for the whole county, or union of counties, in which their respective municipalities lie, (*a*) and

Certain persons to be *ex officio* justices of the peace.

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v. *Great Northern R. Co.*, 9 Ex. 55, 84; adopted by Martin, B., in *Payne* v. *Brecon*, 3 H. & N. 579; see also *Holdsworth* v. *Dartmouth*, 11 A. & E. 490; *Reg.* v. *Lichfield*, 4 Q. B. 893; *Pallister* v. *Gravesend*, 9 C. B. 774; *Nowell* v. *Worcester*, 9 Ex. 457; *Kendall* v. *King*, 17 C. B. 483. An exception is created by sec. 634, sub-s. 3.

(*a*) The ordinary rule is that the jurisdiction of a local officer is not to be extended beyond the municipality of which he is an officer. But as many of the criminals who find their way into cities and towns are from rural municipalities, and as some of those who escape from cities and towns find their way into rural municipalities, in order to avoid the backing of warrants in such cases, it has been deemed proper to make the officers in this section mentioned not simply "*ex officio* Justices of the Peace," but *ex officio* Justices of the Peace "for the *whole* county or union of counties in which their respective municipalities lie." See *Reg.* v. *Mosier*, 4 P. R. 64. It would seem that mayors of cities and towns under this section are *ex officio* Justices of the Peace for the counties in which their municipalities lie.

aldermen in cities shall be Justices of the Peace for such cities. (*b*) 46 V. c. 18, s. 416.

Jurisdiction of mayors over certain offences.

416. The mayor of a town or city (*c*) where there is no Police Magistrate, (*d*) shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the by-laws of the town or city, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office. 46 V. c. 18, s. 417.

Qualification of certain officials.

417. No warden, mayor, reeve, or alderman, (*f*) after taking the oaths or making the declarations as such, shall be required to have any property qualification, or to take any further oath to enable him to act as a Justice of the Peace. (*g*) 46 V. c. 18, s. 418.

(*b*) The declaration is not, as in the former part of the section, that the officers named shall be *ex-officio* Justices of the Peace, but that "Aldermen in cities *shall be Justices of the Peace for such cities.*" It was formerly provided that before any alderman should act in the capacity of a Justice of the Peace for the city or county, he should take the same oath of qualification and in the same manner as is by law required by Justices of the Peace. 31 V. c. 30, s. 38. This was an addition to sec. 357 of the Municipal Act of 1866, which contained no such provision; and, in consequence, it was held that a warrant of commitment signed by an alderman who had not so qualified was invalid to uphold the detention of the prisoner confined under it. *Regina* v. *Boyle*, 4 P. R. 256. It is now provided that no alderman, &c., after taking the oaths or making the declaration as such, shall be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace. Sec. 417.

(*c*) Although the mayor is *ex officio* a justice of the peace (sec. 415,) he is only entitled to act as such where there is no Police Magistrate, or in the absence or illness, or at the request of the Police Magistrate. See Rev. Stat. c. 72, ss. 6, 13, 20. See further note *o* to sec. 432.

(*d*) Every city and every town having more than 5,000 inhabitants *shall* have a Police Magistrate. Rev. Stat. cap. 72, sec. 2. Every other town *may*, if the Lieutenant-Governor in Council see fit to make such an appointment, have a Police Magistrate. *Ib.* sec. 3. Police Magistrates may also be appointed in counties and districts. *Ib.*, ss. 8-10.

(*f*) It is the policy of the law to require all persons entitled to discharge the subordinate but responsible and, it may be, arbitrary duties of a Justice of the Peace, to have some property qualification to answer to persons aggrieved by their misconduct. No person can be a warden, mayor or reeve without having some property qualification. The possession of these offices, therefore is some guarantee of property. See Rev. Stat. c. 72, s. 5.

(*g*) See note *c* supra.

Jurisdiction of justices under certain by-laws.

418. Every Justice of the Peace for a county (*h*) shall have jurisdiction in all cases arising under any by-law of any municipality in the county, where there is no Police Magistrate. (*i*) 46 V. c. 18, s. 419.

Jurisdiction in cases not specially provided for.

419. In case any offence is committed against a by-law of a council, for the prosecution of which offence no other provision is made, (*j*) any Justice of the Peace having jurisdiction in the locality where the offender resides, or where the offence was committed, whether the Justice is a member of the council or not, may try and determine any prosecution for the offence. 46 V. c. 18, s. 420.

DIVISION II.—PENALTIES.

Recovery and enforcement thereof. *Secs.* 420-422.
On offences against By-laws. *Sec.* 421.
Application of penalties. *Sec.* 423.

(*h*) The authority of Justices of the Peace appointed by the Crown is limited to the locality specified in their commissions. It is in no case attached to the person, so as to be capable of being exercised elsewhere than within those limits. A Justice of the Peace, for the time that he shall make his abode or be out of the county where he is in commission, cannot intermeddle or take any recognizance or any examination, or otherwise exercise his authority in any matter that shall happen within the County where he is in commission. Neither can he cause one to be brought before him out of the county where he is in commission, "for being out of the county where he is in commission, he is but as a private man." See Paley on Convictions, 5th Ed. 18.

(*i*) The meaning of this section is not free from doubt. The language used is very comprehensive. *Every* Justice of the Peace for a county shall have jurisdiction in *all cases* arising under *any* By-law of *any* municipality in such county where there is no Police Magistrate. This is broad enough to give jurisdiction to County Justices, in the cases mentioned, over offences against by-laws committed in cities and towns, provided there be no Police Magistrate in such cities and towns.

(*j*) As to power to impose punishments for breaches of by-laws. See sec. 479, sub-ss. 17-19. The jurisdiction of the Justice is made to depend either on the locality where the offender resides or where the offence was committed. A Justice having jurisdiction in either locality may not only try but determine the prosecution. The authority of a Justice, who is so by virtue of his office as mayor, reeve, &c., is limited to the county in which his municipality is situate, and the authority of a Justice of the Peace appointed by commission from the Crown, is limited to the locality therein specified. See note *h* supra. His power can only be exercised where there is no Police Magistrate, Rev. Stat. c. 72, ss. 6, 13, or in the absence or illness or at the request of the Police Magistrate. *Ib.* ss. 6, 20

Recovery and enforcement of penalties.

Imprisonment in default of payment.

420. Every fine and penalty imposed by or under the authority of this Act (*a*) may, unless where other provision is specially made therefor, (*b*) be recovered and enforced with costs, (*c*) by summary conviction, before any Justice of the Peace for the county, or of the municipality in which the offence was committed; (*d*) and in default of payment the offender may be committed to the common gaol, house of correction, or lock-up house of the county or municipality, there to be imprisoned for any time, in the discretion of the convicting Justice, not exceeding, (unless where other provision is specially made), thirty days, (*e*) and with or without hard labour, unless such fine and penalty, and costs, including the costs of the committal, are sooner paid. (*f*) 46 V. c. 18, s. 421.

(*a*) A by-law without a penalty would be nugatory; so power is given to municipal councils to pass by-laws for inflicting reasonable punishment for breach of any of the by-laws of the council. Sec. 479, sub-ss. 17-19.

(*b*) Where power is given to enforce payment of a penalty in a particular mode, the power to enforce in any other mode is impliedly excluded. *Kirk* v. *Nowill*, 1 T. R. 118, 125; *Hart* v. *Mayor*, &c., 9 Wend. (N.Y.) 571, 588.

(*c*) Before the 18 Geo. III. cap. 19, was passed in England, there was no *general* power enabling a convicting Justice to award costs. Special provisions to that effect were, however, inserted in particular Acts. See *Skingley* v. *Surridge*, 11 M. & W. 503; *Wray* v. *Toke*, 12 Q. B. 492, 510. The Justice cannot delegate to another the power to ascertain the costs. *Rex* v. *St. Mary's, Nottingham*, 13 East, 57 *n*: *Sellwood* v. *Mount*, 1 Q. B. 726; *Lock* v. *Sellwood*, *Ib.*, 736; *Reg.* v. *Clark*, 5 Q. B. 887. The amount of costs should be specified in the conviction. *Bott* v. *Ackroyd*, 28 L. J. Mag. Cas. 207. See also *Reg.* v. *Ely*, 5 E. & B. 489. See further, *Tarry* v. *Newman*, 15 M. & W. 645, 653; *Wray* v. *Toke*, 12 Q. B. 492, 509; *Reg.* v. *Glamorganshire*, 19 L. J. Mag. Cas. 172; *Reg.* v. *Merionethshire*, 1 D. & M. 121; *Reg.* v. *Westmoreland*, 1 D. & L. 178; *Ex parte Holloway*, 1 Dowl. 26. Where the Justices left blanks for the amount of costs, it was held to be an irregularity but not an excess of jurisdiction, so as to render them liable to be sued. *Bolt* v. *Ackroyd*, 28 L. J. Mag. Cas. 207; *Reg.* v. *Ely*, 5 E. & B. 489.

(*d*) See note *a* to sec. 415.

(*e*) A conviction ordering imprisonment in default of payment of fine without any provision for distress under this section, would be illegal. *Reg.* v. *Bleakley*, 6 P. R. 244. See further note *m* to sec. 422.

(*f*) It has been held that where corporal punishment is substituted for the penalty in the event of non-payment, the punishment is not to extend to the non-payment of the costs. *Reg.* v. *Barton*, 13 Q. B. 389; see also *Barton* v. *Bricknell*, *Ib.*, 393.

Penalties imposed by by-laws.

421. The Justice or other authority before whom a prosecution is had for an offence against a municipal by-law, (*g*) may convict the offender on the oath or affirmation of any credible witness, (*h*) and shall award the whole or such part of

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(*g*) See sec. 479, sub. s. 17.

(*h*) According to the interpretation put upon similar words in the Statute of Frauds, 29 Car. 2, c. 3, sec. 5, *credible* witness is equivalent to *competent* witness. *Hawes* v. *Humphrey*, 9 Pick. (Mass.) 350; *Haven* v. *Hilliard*, 23 Pick. (Mass.) 10; *Armoy* v. *Fellows*, 5 Mass. 219; *Sears* v. *Dillingham*, 12 Mass. 288; Jarman on Wills, 3rd ed. 82. So that such witnesses only can be properly examined as are competent witnesses in a Court of Justice. When pecuniary interest amounted to a disqualification, the informer, when entitled to a portion of the penalty, was incompetent both on the ground of interest and on the ground of being a party entered on the record. *Rex* v. *Tilly*, 1 Str. 316; *Rex* v. *Stone*, 2 Ld. Rayd. 1545; *Rex* v. *Blaney*, Andr. 240; *Rex* v. *Piercy*, *Ib.*, 18; *Rex* v. *Robotham*, 3 Burr. 1472; *Rex* v. *Shipley*, cited in Gilb. 113; *Rex* v. *Cobbold*, Gilb. 111; *Portman* v. *Okeden*, Say. 179; *Rex* v. *Blackman*, 1 Esp. 96; but see *Jennings* v. *Hankeys*, 3 Mod. 114; *Rex* v. *Johnson*, Willes, 425, note *c*. But so far as this Act is concerned, it is expressly provided that "the person giving or making the information or complaint, shall be a competent witness." Sec. 424. It is also now expressly declared that on the trial of any *proceeding*, *matter* or *question* under any Act of the Legislature of Ontario, or on the trial of any proceeding, matter or question *before any Justice of the Peace*, mayor or police magistrate, in any matter cognizable by such Justice, mayor or police magistrate, *not being a crime*, the party opposing or defending, or the wife or husband of the person opposing or defending, shall be *competent* and *compellable* to give evidence therein. Rev. Stat., c. 61, s. 9. Interest is now no longer a ground of disqualification in any witness. *Ib.* ss. 2 & 3. Nor, with a few exceptions, is the fact that he is a party to the record. One of these is that no person shall be compellable to answer any question tending to criminate himself, or to subject him to a prosecution for any penalty. *Ib.* sec. 5. None of these provisions relax or affect the law of evidence in regard to criminal procedure. Persons put on trial for a criminal offence cannot testify for or against themselves. See *Winsor* v. *Regina*, 7 B. & S. 490; L. R. 1 Q. B. 390; 10 Cox. 276; *Attorney-General* v. *Radloff*, 10 Ex. 84. If imprisonment may in the first instance follow the conviction, the proceeding is in general looked upon as a criminal one. *Per* Platt, B., in *Attorney-General* v. *Radloff*, 10 Ex. 84. There are many crimes, properly so called, which are liable to be punished on summary conviction. But there are a vast number of acts which in no sense are crimes, which are also punishable; such, for instance, as keeping open house after certain hours, and a variety of breaches of police regulations which will readily occur to the mind of any one. *Per* Baron Martin, *Ib.* 96. Where the proceeding is conducted with a view and for the purpose of obtaining redress for the violation of a private right only, the proceeding is a civil one: but, on the other hand, where the proceeding is directed for the punishment of an

the penalty or punishment imposed by the by-law as he thinks fit, (*i*) with the costs of prosecution, and may by warrant, under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, (*k*) cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender. (*l*) 46 V. c. 18, s. 422. Award of penalty and costs.

422. In case of there being no distress found out of which the penalty can be levied, (*m*) the Justice may Commitment in default of distress.

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offence which militates against the general interest of the community, and for the punishment of the infraction of some public duty, such proceeding is a criminal proceeding. *Per* Sir Alexander Cockburn, in arguing same case, p. 86. It is not an easy matter to draw a line, and so be able to decide on which side of it each case should be placed. Reference may be made to the following cases: *Attorney-General* v. *Bowman*, 2 B. & P. 532, n.; *Attorney-General* v. *Siddam*, 1 C. & J. 220; *Huntley* v. *Luscombe*, 2 B. & P. 530; *Rackham* v. *Bluck*, 9 Q. B. 691; *Cobbet* v. *Slowman*, 9 Ex. 633; *Ex parte Eggington*, 2 E. & B. 717; *Sweeny* v. *Spooner*, 3 B. & S. 329; *Reeve* v. *Wood*, 5 B. & S. 364; *Attorney-General* v. *Sullivan*, 32 L. J. Ex. 92; *Easton's Case*, 12 A. & E. 645; *Cattell* v. *Ireson*, E. B. & E. 91; *Morden* v. *Porter*, 7 C. B. N. S. 641; *Hearne* v. *Garton*, 2 E. & E. 66; *Parker* v. *Green*, 2 B. & S. 299; *In re Lucas and McGlashan*, 29 U. C. Q. B. 81; *Reg.* v. *Boardman*, 30 U. C. Q. B. 553; *Reg.* v. *Roddy*, 41 U. C. Q. B. 291; *Peek* v. *Shields*, 6 A. R. 639; *Reg.* v. *Lackie*, 7 O. R. 431.

(*i*) It may be that the by-law imposes a fixed penalty for the offence. But usually the by-law states a maximum and minimum sum. The power of a municipal corporation to impose such a sliding penalty was at one time doubted. See note to sec. 479, sub-s. 17. The power of the corporation to delegate to the Justice the fixing of the amount was also doubted. *Ib.* But as a knowledge of the circumstances of each particular case is essential for the exercise of discretion both as to fine and imprisonment, and as this knowledge can only be obtained by the Justice before whom the offender is brought, it has been deemed right expressly to provide that the Justice shall award "the whole or *such* part of the penalty or punishment imposed by the by-law as *he thinks fit.*" *In re Snell and the Town of Belleville*, 30 U. C. Q. B. 81.

(*k*) The warrant must be under "hand and seal," and therefore in writing. See *Hutchinson* v. *Lowndes*, 4 B. & Ad. 118.

(*l*) This section applies only to proceedings for offences against municipal by-laws. Municipal corporations have no power to create crimes or regulate criminal procedure.

(*m*) The power of imprisonment may be either as the direct punishment for an offence or as the means of enforcing payment of a pecuniary penalty. In the former the provision would savour of crime, see note *h* to sec. 421; in the latter, of procedure other than criminal procedure. *Ib.* Here the power of commitment is con-

commit the offender to the common gaol, house of correction, or nearest lock-up house, for the term, or some part thereof, specified in the by-law.. (*n*) 46 V. c. 18, s. 423.

Fines, how applied.

423. Unless otherwise provided, (*o*) when the pecuniary penalty has been levied under this Act, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the municipal corporation, (*p*) unless the prosecution is brought in the name of the corporation, in which case the whole of the pecuniary penalty shall be paid to the corporation. (*q*) 46 V. c. 18, s. 424.

[*As to summary method of enforcing by-laws. See sec.* 482.]

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tingent on "there being no distress found out of which the penalty can be levied." The commitment, therefore, ought not to be issued till the fact that there is no sufficient distress is ascertained. *Reg.* v. *Hawkins*, Fort. 272, *per* Parker, C. J.; *Reg.* v. *Bleakeley*, 6 P. R. 244. A Justice who in such a case commits a party without inquiry as to distress, may, if there be a distress, be sued as trespasser. *Hill* v. *Bateman*, 2 Str. 710. Some statutes only allow the commitment to issue upon due proof upon oath of the want of distress. 50 Geo. III. ch. 108, s. 7. If the same person be convicted of two penalties, and there be goods enough to answer only one, they may be levied under the one and imprisonment follow on the other. *Reg.* v. *Wyatt*, 2 Ld. Rayd. 1195; *S. C.* 11 Mod. 54.

(*n*) The commitment must be in writing. *Mayhew* v. *Locke*, 2 Marsh, 377. It should be drawn up forthwith after the commitment is ordered. *In re Masters*, 33 L. J. Q. B. 146. Detention of the party without a written warrant cannot be justified further than necessary to make out the warrant. *Hutchison* v. *Lowndes*, 4 B. & Ad. 118. But the detention of the party till the return of the warrant of distress may, it seems, be by parol. *Stile* v. *Walls*, 7 East 533.

(*o*) If the statute under which the conviction takes place applies the penalty with certainty, it is sufficient for the Justice to award the penalty to be paid and applied according to law. *Re Boothroyd*, 15 M. & W. 1; *Reg.* v. *Cridland*, 7 E. & B. 853; *Reg.* v. *Johnson*, 8 Q. B. 102; see also *Reg.* v. *Glossop*, 4 B. & Al. 616; *Brown* v. *Nicholson*, 5 C. B. N. S. 468; *Seamen's Hospital* v. *Liverpool*, 4 Ex. 180; *Wray* v. *Ellis* 1 E. & E. 276. If there be any material variance between the conviction and the statute as to the appropriation of the penalty, the conviction will be bad. *Griffith* v. *Harris*, 2 M. & W. 335; *Chaddock* v. *Wilbraham*, 5 C. B. 645.

(*p*) "The moiety of the informer's share of the penalty should be preserved to him. Under the by-law as it stands he gets no share: and it may damp the energies of a class of people who are supposed by the Legislature to be necessary, and to do good service, if the reward which stimulates them to action is taken away." *Per* Wilson, J., *In re Snell and the Town of Belleville*, 30 U. C. Q. B. 81, 89.

(*q*) Where the statute gives a discretion, either as to the amount of the penalty or its application, the Justice must, on the face of the

DIVISION III.—WITNESSES AND JURORS.

Who may be witnesses. *Secs.* 424, 425.
Ratepayers, members, officers, &c., of corporation, liable to challenge as jurors. *Sec.* 425.
Compelling attendance of witnesses. *Sec.* 426.

Who may be witnesses.

424. Upon the hearing of any information or complaint exhibited or made under this Act, the person giving or making the information or complaint shall be a competent witness, notwithstanding such person may be entitled to part of the pecuniary penalty on the conviction of the offender, and the defendant and the wife or husband of such persons opposing or defending, shall also be competent witnesses; and all the said persons shall be compellable to give evidence on the hearing. (*r*) 46 V. c. 18 s. 425.

Ratepayers, members, officers, &c., of corporation competent witnesses—may be challenged as jurors.

425. In any prosecution, action or proceeding in any civil matter (*s*) to which a municipal corporation is a party no ratepayer, member, officer or servant of the corporation shall, on account of his being such be incompetent as a witness; (*t*) but they, and every of them, shall be liable to challenge as a juror, except where the corporation, the party to the prosecution, action or proceeding, is a county. (*u*) 46 V. c. 18, s. 426.

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conviction, show in what manner the discretion has been exercised. *Rex* v. *Dimpsey*, 2 T. R. 96; *Rex* v. *Symonds*, 1 East, 189; *Re Boothroyd*, 15 M. & W. 1; *Rex* v. *Seale*, 8 East, 568, 573; *Rex* v. *Smith*, 5 M. & S. 133; *Reg.* v. *Johnson*, 8 Q. B. 102; *Wray* v. *Toke*, 12 Q. B. 492; see also *Rex* v. *Wyatt*, 2 Ld. Rayd. 1478; *Rex* v. *Priest*, 6 T. R. 538.

(*r*) This removes all ground for supposing that the informant or complainant is by reason of pecuniary interest, disqualified, but leaves untouched the question as to the competency as a witness of the person complained against. See note *h* to sec. 421.

(*s*) As to what matters are civil and what are criminal, see note *h* to sec. 421.

(*t*) The Evidence Act, Con. Stat. U. C. ch. 32, (Rev. Stat. c. 61.) long before the passing of the Act from which this section is taken, had removed any such disqualification as is here supposed to exist. See note *h* to sec. 421.

(*u*) If this means anything, it means that the fact of the person called as a juror being a ratepayer of the corporation—that is, a party to the civil proceeding in which he is called—shall be a per-

Compelling witnesses to attend, &c.

426. In prosecuting under any by-law, or for the breach of any by-law, witnesses may be compelled to attend and give evidence in the same manner, and by the same process, as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily, under the statutes now in force, or which may be hereafter enacted. (*v*) 46 V. c. 18, s. 427.

DIVISION IV.—CONVICTIONS UNDER BY-LAWS.

Form of Conviction. Sec. 427.

Form of conviction under by-laws.

427. It shall not be necessary in any conviction made under any by-law of any municipal corporation, to set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, (*w*) but all such convictions may be in the form following: (*x*)

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emptory ground of challenge. Before this Act such a person "was liable to challenge" for cause. The object of this Act must be to make the challenge good as a peremptory challenge. The only exception to the challenge is where the corporation "is a county."

(*v*) If it is made to appear to any Justice by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before such Justice, or any other Justice for the territorial division, who shall then be there to testify what he knows concerning the information or complaint. R. S. C. c. 178, s. 29. If the person summoned neglect or refuse to appear at the time and place appointed by the summons, and no just excuse be offered for such neglect or refusal, then, after proof upon oath or affirmation of the summons having been served upon such person either personally or by leaving the same for him with some person at his last or most usual place of abode, the Justice before whom such person should have appeared, may issue a warrant to bring and have such person at a time and place to be therein mentioned before the Justice who issued the summons, or before any other Justice in and for the same territorial division who shall then be there to testify as aforesaid. *Ib.* sec. 30. The warrant may, if necessary, be backed, in order to its being executed out of the jurisdiction of the Justice who issued it. *Ib.*

(*w*) The law was formerly otherwise. *Reg.* v. *Ross*, H. T. 3 Vict. R. & J. Dig. 1979.

(*x*) The conviction should shew the by-law to have been passed by

PROVINCE OF ONTARIO, County of , To WIT. } BE IT REMEMBERED that on the day of , A.D. , at , in the County of , *A. B.* is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said County, for that the said *A. B. (stating the offence, and time and place, and when and where committed)*, contrary to a certain by-law of the Municipality of the of , in the said County of , passed on the day of , A.D. , and intituled *(reciting the title of the by-law)*, and I adjudge the said *A. B.*, for his said offence, to forfeit and pay the sum of , to be paid and applied according to law, and also to pay to *C.D.*. the complainant, the sum of for his costs in this behalf. And if the said several sums are not paid forthwith (*or* on or before the day of , *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said *A.B.*; and in default of sufficient distress, I adjudge the said *A.B.*, to be imprisoned in the Common Gaol of the said County of (*or*, in the public Lock-up at) for the space of days, unless the said several sums, and all costs and charges of conveying the said *A.B.* to such Gaol (*or* Lock-up), are sooner paid.

Given under my hand and seal, the day and year first above written at , in the said County.

[L.S.] *J. M.*
J. P.

46 V. c. 18, s. 428.

DIVISION V.—EXECUTION AGAINST MUNICIPAL CORPORATIONS.

Proceedings on Writs of Execution. *Sec.* 428.
Municipal Officers, also Officers of Court. *Sec.* 429.

428. Any writ of execution against a municipal corporation (*a*) may be endorsed with a direction to the sheriff to Proceedings on writs of execution

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the council of the particular municipality. *Reg.* v. *Osler*, 32 U. C. Q. B. 332. The omission of the date or title of the by-law would not be fatal to the conviction, if the by-law be in other respects sufficiently referred to. (*Ib.*) But some reference to the by-law is necessary. *In re Livingstone*, 6 P. R. 17.

(*a*) A municipal corporation being liable to be sued, is liable to the consequence of a suit, viz., execution. As the assets of the corporation are not the property of the members of the council, but of the people whom they represent, the form of proceeding by execution against such a corporation must, under certain circumstances, differ from that of proceeding by execution against an individual. If it were not for the provisions here made as to execution, it would seem that the judgment creditor's principal remedy would be by writ of mandamus. See Dillon on Municipal Corporations, 3rd ed. sec. 850. It would seem that the private property of the corporation, *i.e.* such as is held for profit and free from any public trust, may be sold under

against municipalities.

levy the amount thereof by rate, (*b*) and the proceedings thereon shall then be the following : (*c*)

Sheriff to deliver copy of writ and statement of claim to treasurer.

1. The sheriff shall deliver a copy of the writ and endorsement to the treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the sheriff's fees, (*d*) and of the amount required to satisfy the execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service ;

If claim not paid, rate to be struck by sheriff.

2. In case the amount, with interest thereon from the day mentioned in the statement, is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment rolls of the corporation, and shall, in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, (*e*) with such addition to the same as the sheriff

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execution. *Ib.* sec. 576. It never could be intended by the Legislature that executions could be enforced against property held for public purposes, such as public buildings, hospitals, school houses, &c. *Ib. Scott* v. *Union School Sections of Burgess and Bathurst*, 19 U. C. Q. B. 28. There is certainly no right, independently of statute, in the creditor to resort for payment to the private property of the inhabitants. *Horner* v. *Coffee*, 25 Miss. (3 Cush.) 434.

(*b*) The writ *may* (not must) be endorsed with a direction to the Sheriff to levy the amount by rate. The writ may also be endorsed, as in the case of writs of execution against individuals, either to levy of goods or lands (*or as the case may be*) of the Corporation, in which event a rate would not be contemplated, and probably would not be necessary. See *Chicago* v. *Hasley*, 25 Ill. 595.

(*c*) If the writ be endorsed to levy the amount by rate, the proceedings *shall* be as directed.

(*d*) The sheriff is not entitled to poundage on writs of execution against municipal corporations, unless he actually make the money. *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262. Where a settlement is obtained by means of the pressure of the sheriff, he is entitled to be paid reasonable compensation for the services performed, although no special fee be assigned for such service in any statute or table of costs. *Ib.* If the sheriff make the money, it would seem that the writ is virtually executed, and that he is entitled to poundage, though he may under this section have levied a rate to collect the amount. *Ib.* See further, *Nash* v. *Dickenson*, L. R. 2 C. P. 252 ; *Bisseicks* v. *Bath, Colliery Co.*, 36 L. T. N. S. 800 ; *Roe* v. *Hammond*, 2 C. P. D. 300.

(*e*) It is the duty of the sheriff to strike a rate "sufficient," &c. No provision exists for the striking of a second rate, in the event of the first proving insufficient. If the amount levied should be *more* than sufficient, provision is made for the disposition of the surplus. Sub-s. 5. It would appear to be necessary, where there are in the hands of the sheriff at the same time several writs of execution

deems sufficient to cover the interest, his own fees, and the collector's percentage, up to the time when the rate will probably be available ;

Sheriff's precept to collector, &c., to levy rate.

3. The sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the collector or respective collectors of the corporation, and shall annex to every precept the roll of such rate, and shall by the precept after reciting the writ, and that the corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the collector or collectors, within their respective jurisdictions, (*f*) to levy such rate at the time and in the manner by law required in respect of the general annual rates ;

Rate rolls.

4. In case at the time for levying the annual rates next after the receipt of such precept, the collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed "*Execution rate in A. B.* vs. *The Township*" (or as the case may be, adding a similar column for each execution if more than one), and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are required to make the returns of the general annual rate, return to the sheriff the precept with the amount levied thereon, after deducting their percentage ;

Surplus.

5. The sheriff shall, after satisfying the execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the treasurer, for the general purposes of the corporation. (*g*) 46 V. c. 18, s. 429.

Clerk, assessors and collectors to be officers of the Court from which writ issues.

429. The clerk, assessors and collectors of the corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect, the provisions of this Act, with respect to such executions, be deemed to be officers of the Court out of which the writ

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against the same corporation, to strike a rate for each particular writ. See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.

(*f*) If the corporation withhold the assessment rolls from the sheriff, his remedy would be to apply to the Court to compel them to submit the rolls to him. See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.

(*g*) See note *d* to this section.

issued, and as such shall be amenable to the Court, (*h*) and may be proceeded against by attachment, mandamus or otherwise, in order to compel them to perform, the duties hereby imposed upon them. 46 V c. 18, s. 430.

DIVISION VI.—TENDER OF AMENDS.

Tender and payment into Court in actions for negligence . Sec. 430.

Tender of compensation in actions for negligence.

430. The council of any municipality, upon any claim being made or action brought for damages for alleged negligence on the part of the municipality, may tender, or pay into Court, as the case may be, such amount as they may consider proper compensation for the damage sustained, and in the event of the non-acceptance by the claimant of such tender or the amount paid into Court, and the action being proceeded with, and a verdict being obtained for no greater amount than the amount so tendered or paid into Court, the costs of suit shall be awarded to the defendants, and set off against any verdict which shall have been obtained against them. (*i*) 46 V. c. 18, s. 431. *See sec.* 339.

DIVISION VII.—CONTRACTS WITH MEMBERS OF COUNCIL VOID.

Contracts with members of Council. Sec. 431.

Contracts by members with the corporation to be held void in any action.

431. In case a member of the council of any municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the corporation is a party interested, (*l*) the contract, purchase or sale

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(*h*) This is a most important clause. The power of the Court over its officers is of a very summary nature. They may be punished by process of attachment for contempt in disobeying its rules or orders. See 2 Chit., Archd. 1710, 12 Ed.

(*i*) *See* sec. 339 and notes thereto.

(*l*) Where the mayor of the city of Toronto secretly contracted to purchase at a discount, a large amount of the debentures of the City, which were expected to be issued under a future By-law of the City Council, and was himself afterwards an active party in procuring and giving effect to the By-law which was subsequently passed, the Court of Chancery held him to be a trustee for the City of the profit he derived from the transaction. *Toronto* v. *Bowes*, 4 Grant 489

shall be held void in any action thereon against the corporation. (*m*) 46 V. c. 18, s. 432.

Division VIII.—Police Office and Police Magistrate.

(*See Rev. Stat. cap.* 72.)

In Cities and Towns. *Sec.* 432.
Clerk of. *Sec.* 433.

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which decision was affirmed in appeal,—6 Grant 1, and afterwards upheld by the Privy Council. So where a member of a municipal corporation agreed with another party to take a contract from the corporation for the execution of certain works in his name, the profits whereof were to be divided between the parties, it was held that such a contract was in contravention of the municipal law, and the Court of Chancery refused to enforce the agreement for a partnership. *Collins* v. *Swindle*, 6 Grant 282. An action on a contract for the sale of goods by a trading partnership, of which a member is also a member of the municipal council, may, where the contract is not executed, be resisted on the ground that one of the plaintiffs is a member of the municipal council. *Brown* v. *Lindsay*, 35 U. C. Q. B. 509. A bill will lie, by some of the inhabitants of a municipality alleging an illegal misapplication of municipal funds by the mayor, which the council, though requested, refused to interfere with. See *Paterson* v. *Bowes*, 4 Grant 170; see also *West Gwillimbury* v. *Hamilton and North-Western R. W. Co.*, 23 Grant 383.

(*m*) In an action at law, the declaration alleged that defendant, as agent of the plaintiffs, undertook to expend certain moneys for them in certain roads and bridges; that he falsely and fraudulently represented to them that he had caused work to be done; and, in collusion with the persons alleged to have done the work, and by drawing false orders in their favour containing such representations, caused a certain sum to be drawn out of the plaintiffs' treasury, whereas the work had not been done and the plaintiffs lost the money. Common money counts were added. It appeared at the trial that the corporation, by a resolution, directed that $300 should be granted to each councillor, defendant being one, to be expended on the roads; and, by another resolution, that $100 should be placed to the credit of each councillor, to be expended by them on the roads and bridges in their respective divisions. This was in accordance with an established practice, by which the councillors superintended the laying out of moneys in their respective divisions. Defendant granted several orders on the treasurer to different persons for work alleged to be done, which orders were paid, and it afterwards appeared that the work, though contracted for, had not been done. There was no evidence of fraud or collusion on the part of the defendant, or any gain to himself, except a charge to the corporation of commission on moneys expended. The jury found for the plaintiffs. The Court ordered a new trial, holding that the special

Police offices in cities and towns.

432. The council of every town and city shall establish therein a Police Office; and the Police Magistrate, (*n*) or in his absence, or where there is no Police Magistrate, the mayor of the town or city shall attend at such police office daily or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace; but any Justice of the Peace having jurisdiction in a town or city may, at the request of the Mayor thereof, act in his stead at the Police Office. (*o*) 46 V. c. 18, s. 433 (1).

Clerk of police office, and his duties.

If paid by salary, fees to be paid over to municipality.

433. The clerk of the council of every city or town, or such other person as the council of the city or town appoints for that purpose, shall be the clerk of the police office thereof, and perform the same duties and receive the same emoluments as clerks of Justices of the Peace; and in case the said clerk is paid by a fixed salary, the emoluments shall be paid by him to the municipality, and form part of its funds, and such clerk shall be the officer of and under the Police Magistrate. (*p*) 46 V. c. 18, s. 434.

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count was not proved; that there could be no recovery on the common counts; and that it was doubtful if, in such a case, there could be any adequate remedy in a Court of Law. *Chatham* v. *Houston*, 27 U. C. Q. B. 550. Contracts such as the foregoing, between corporations and members to act as commissioners, overseers or superintendents, are now expressly authorized and legalized. See sec. 479, sub-sec. 2.

(*n*) As to the appointment of Police Magistrates in cities and towns see note *d* to sec. 416.

(*o*) This provision seems in conflict with the provisions of the *Act Respecting Police Magistrates*. See Rev. Stat. c. 72, secs. 6 and 20, which gives power to the Police Magistrate to request a Justice of the Peace to act for him and it may be that this provision will only be held to apply in cities and towns where there is no Police Magistrate or where such office is vacant or where the Police Magistrate has failed to request any one to act for him in his absence. See further sec. 416.

(*p*) The appointment of police clerks rests with the municipal councils. The clerk of each council is to act *ex officio* in the absence of any other appointment. Whether he acts *ex officio* or is appointed to act, if in the receipt of a fixed salary as clerk of the council, the fees appertaining to his office as clerk, of the Police Court, are to be paid by him to the municipality and form part of its funds. See *Askin* v. *London District Council*, 1 U. C. Q. B. 292. Where the town clerk did not act as police clerk and no appointment having been made by the council the Police Magistrate made an appointment which the council, with full notice thereof, did not repudiate, it was held that the clerk must be considered as if appointed by

Division IX.—Board of Commissioners of police and Police Force in Cities and Towns.

Board, members of. *Sec.* 434.
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434. In every city there is hereby constituted a board of commissioners of police, and in every town having a Police Magistrate the council may constitute a like board; and such Board shall consist of the mayor, the Judge of the

Board of commissioners of police in cities and towns, of whom composed.

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the council, and entitled to retain the fees given to police clerks. *Peterborough* v. *Hatton*, 30 U. C. C. P. 455. This section applies to cases arising both under Dominion and Provincial Acts. (*Ib.*) Where a municipal council in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary "in lieu of all fees," and subsequently the Jury Act (13 & 14 Vict. ch. 55) was passed, it was held that the resolution would not debar him from claiming fees allowed by the Statutes for preparing jury books for the following year. *Pringle and Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 254. So where by the English Vestry Clerks Act, 13 & 14 Vict., ch. 57, s. 7, the Vestry Clerk is to make out, when required, the poor rate and to assist the Churchwardens or overseers in preparing and making out all other parochial assessments or accounts, and by the Union Assessment Committee Act Amendment Act, 27 & 28 Vict. c. 39, s. 7, the overseers of a parish may charge any expense incurred by them with the consent of the vestry in making out any valuation list upon the poor rate it was held that the valuation list was not an assessment so that the vestry clerk was entitled to be paid therefor notwithstanding his salary as vestry clerk. *Reg.* v. *Cumberlege*, 36 L. T. N. S. 700.

County Court of the county in which the city or town is situate, and the Police Magistrate; and in case the office of County Judge or that of Police Magistrate is vacant, the council of the city shall and the council of the town may appoint a person resident therein to be a member of the board, or two persons so resident to be members thereof, as the case may require, during such vacancy: (*s*) but the council of such town may at any time, by by-law, dissolve and put an end to the board, and thereafter the council shall have and exercise all powers and duties previously had or exercised by the board. 46 V. c. 18, s. 435.

Board may examine witnesses on oath.

435.—(1) The commissioners shall have power to summon and examine witnesses on oath on all matters connected with the administration of their duties, (*a*) and they shall have the same power to enforce the attendance of such witnesses, and to compel them to give evidence as is vested in any Court of law in civil cases. A notice to attend before the board shall be sufficient, if signed by the chairman (*b*) of the board, or any one of the commissioners.

Privileges of witnesses.

(2) No party or witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution.

Quorum.

(3) A majority of the board shall constitute a quorum, and the acts of a majority shall be considered acts of the board. 50 V. c. 8, Sched.

Meetings in cities to be open to public.

(4) All meetings of the board of police commissioners in cities shall be open to the press and the public, unless otherwise decided by the board. 46 V. c. 18, s. 436 (2).

Licensing livery stables, cabs, &c., in cities.

436—(1) The board of commissioners of police shall, in cities license and regulate (*c*) second-hand stores and junk stores

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(*s*) The intention is, that the board, when full, shall consist of three persons, and that it shall at all times be full; two of the board constitute a quorum. See sub-s. 3 of this note.

(*a*) As to the duties under the Act. See secs. 436, 441, 442.

(*b*) No provision is made either for the appointment of chairman, though a chairman is intended, see sec. 437, or for a casting vote in the event of a tie. See *People* v. *Rector, &c.*, 48 Barb. (N.Y.) 603. Acts done when less than a legal quorum is present are void. See Dillon on Municipal Corporations, 3rd ed. secs. 278 *et seq.*

(*c*) Power to license and regulate a particular business does not authorize the exaction of a revenue duty but only of a moderate fee sufficient to cover the cost of issuing the licenses and of inspecting

(*d*) and shall, also in cities, regulate and license the owners of livery stables, (*e*) and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses and other vehicles used for hire, (*f*) and shall establish the rates of fare to be taken by the owners or

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and regulating them. So when the city of Montreal was empowered to license and regulate junk stores, it was held that the exaction of a license fee of $50 per annum was illegal. *City of Montreal and Walker*, M. L. R., 1 Q. B. 469.

(*d*) Power is also given to councils of cities to license and regulate junk stores or shops, but as this clause is the more recent enactment it would probably govern in case of conflict between enactments of the board and the council. Sec. 495 (11).

(*e*) The Board of Commissioners of Police is the body which *alone* has the power to regulate and license livery stables in cities, and it would appear that by-laws of the council passed when the power was vested in them become inoperative. *Regina* v. *Hiscox*, 45 U. C. Q. B. 214. See also *Re Keily*, 13 O. R. 451.

(*f*) There is no power under this section to impose a license fee on the driver. *Reg.* v. *Reeves*, 1 O. R. 490. Power to a city council to make such ordinances "respecting streets, carriages, waggons, carts, drays, &c.," as to them should seem expedient and necessary, was held to authorize an ordinance requiring all persons who drive for hire any cart, dray, waggon or omnibus, within the city, to take out a license and to require the vehicle to be numbered, or on failure to do so to pay a fine. *City Council* v. *Pepper*, 1 Rich. S. C. Law, 364; see further, *Bocking* v. *Jones*, L. R. 6 Q. B. 29. Under a similar ordinance the imposition of an annual charge on each car of a street railway company was sustained. *Frankfort R. Co.* v. *Philadelphia*, 58 Pa. St. 119; *Johnson* v. *Philadelphia*, 60 Pa. St. 445; but see *Mayor, &c.*, v. *Avenue R. Co.*, 32 N. Y. 261. Authority to license hacks, drays, waggons, and other vehicles used within the city for pay does not authorize the taxation of vehicles hauling into and out of the city. *St. Charles* v. *Nolle*, 11 Am. 440. The power is by this section restricted to vehicles "used for hire," and so clearly excludes any power to license vehicles used by merchants, manufacturers and others for their own use. *St. Louis* v. *Grove*, 46 Mo. 574. In England, by Stat. 6 & 7 Vict. ch. 86, sec. 33, provision is made for licensing hacks, and a penalty is imposed on the driver of a hackney coach who shall apply for hire elsewhere than at some standing appointed for the purpose. The following cases have been decided under that statute. *Wurrell* v. *Ellis*, 2 C. B. 295; *Rogers* v. *MacNamara*, 14 C. B. 27; *Weath* v. *Brewer*, 15 C. B. N. S. 893; *Ex-parte Mitcham*, 5 B. & S. 585; *Buckle* v. *Wrightson*, *Ib.*, 854; *Skinner* v. *Usher*, L. R. 7 Q. B. 423; *Fowler* v. *Lock*, L. R. 7 C. P. 272. So regulations are made under the Metropolitan Public Carriage Act, 32 & 33 Vict. c. 115, sec. 4, regulating vehicles plying for hire, the following cases have been decided under it. *Carke* v. *Stanford*, L. R. 6 Q. B. 357; *Allen* v. *Tunbridge*, L. R. 6 C. P. 481; *Bocking* v. *Jones*, L. R. 6 Q. B. 29; see also *Duck* v. *Addington*, 4 T. R. 447; *Rex* v. *Rawlinson*, 6 B. & C. 23; *Cloud* v. *Turfery*, 2 Bing. 318; *Blackpool* v. *Bennett*, 4 H. & N. 127; decided under other similar Acts in England.

drivers of such vehicles, (*g*) for the conveyance of goods or passengers, either wholly within the limits of the city or from any point within the city to any other point not more than three miles beyond said limits, and may provide for enforcing payment of such rates, (*h*) and for such purposes shall pass by-laws and enforce the same in the manner, and to the extent in which any by-law to be passed under the authority of this Act may be enforced; (*i*)

(2) The council of a city in which there is no board of commissioners of police, shall have and may exercise by by-law, all the powers conferred upon the board of commissioners by this section. 49 V. c. 37, s. 9.

(3) The board of commissioners of police shall also regulate and control children engaged as:

(*a*) Express or despatch messengers;

(*b*) Vendors of newspapers and small wares;

(*c*) Bootblacks.

51 V. c. 28, s. 17.

How by-laws of board authenticated and proved.

437. All by-laws of the board of commissioners of police shall be sufficiently authenticated by being signed by the chairman of the board, which passes the same; (*j*) and a copy of such by-law written or printed and certified to be a true copy by any member of the board, shall be deemed authentic, and be received in evidence in any Court of justice without proof of such signature, unless it is specially pleaded or alleged that the signature to such original by-law has been forged (*k*) 46 V. c. 18, s. 438.

(*g*) The power "to *regulate* and license" vehicles used for hire, would involve the power to establish the rates of fare to be taken by the owner or drivers, as well as the power to make it obligatory upon such owners or drivers to carry the tariff printed in some conspicuous place, for the use of those who employ the vehicles. The Legislature has not left the former part of the proposition open to mere inference.

(*i*) The usual mode of enforcing the provisions of a by-law is by fine, to be levied by distress; and in default, by imprisonment. See secs. 421, 422, and notes thereto. Express provision to that effect is made in section 438.

(*j*) The ordinary mode of authenticating a municipal by-law, is to have it under the seal of the corporation and the signature of the head of the corporation. Sec. 288. Commissioners of police are not a corporation, and therefore have no corporate seal; so that their by-laws are to be deemed sufficiently authenticated "by being signed by the chairman of the board which passes the same."

(*k*) This is in effect a transcript of a similar provision made as to

May be enforced by penalties, &c.

How recovered.

438. In all cases where the board of commissioners of police are authorized to make by-laws, either under this or any other Act or law, they shall have power in and by such by-laws to attach penalties for the infraction thereof, (*l*) to be recovered and enforced by summary proceedings before the police magistrate of the city for which the same are passed, or, in his absence, before any justice of the peace having jurisdiction therein, in the manner and to the extent that by-laws of city councils may be enforced under the authority of this Act; and the convictions in such proceedings may be in the form hereinbefore set forth. (*m*) 46 V. c. 18, s. 439.

High bailiffs.

439. The council of every city shall appoint (*o*) a high bailiff but may provide by by-law that the offices of high bailiff and chief constable (*p*) shall be held by the same person. 46 V. c. 18, s. 440.

Police force in cities and towns.

440. The police force in cities and towns having a board of commissioners of police, shall consist of a chief constable,

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the admission in evidence of ordinary municipal by-laws. See sec. 289, and notes thereto.

(*l*) See sec. 420, and notes thereto.

(*m*) See sec. 427.

(*o*) The appointment of high bailiff rests with the municipal council, whereas the appointment of constables rests with the board of police commissioners. Sec. 441.

(*p*) A constable is an officer of great antiquity. Bac. Ab. Constable, A. The office was originally instituted for the better preservation of the peace. *Ib.* C. A constable is the proper officer to a Justice of the Peace, and so is bound to execute warrants. *Ib.* D. The council of every town not having a police board, *shall* and the council of every incorporated village, *may* appoint a chief constable and one or more constables for the municipality. Sec. 445. And in cities and towns having a police board the force shall consist of a chief constable and as many constables and other officers and assistants as the council may deem necessary; but in cities to be not less in number than the board reports to be absolutely required. Sec. 440. The duties of a chief constable usually differ from those of the high bailiff. The latter is, as it were, sheriff of the city; and yet it has been held that it is the duty of the sheriff of the county in which the city is situate, and not of the high bailiff, to convey to the penitentiary prisoners sentenced at the recorder's court. *Glass* v. *Wigmore*, 21 U. C. Q. B. 37. Every city must, under this section, appoint a high bailiff. The council may suspend the high bailiff from the duties of his office. Sec. 450. Police officers "are not necessarily constables or conservators of the peace." See the following note.

and as many constables and other officers and assistants as the council from time to time deem necessary, (*q*) but, in cities,

(*q*) This section relates to the constitution and number of the force. The only authority of the council is, subject to the provisions of this section, to fix the number of the force. See sec. 441. The police force is a force not known to the common law; police officer is an officer not known to the common law. Being created by statute such an officer can only exercise such power as the statute confers on him either by express authority or by necessary inference. See Dillon on Municipal Corporations, 3rd ed. sec. 210. It is by section 443 enacted that constables (apparently meaning police under this Act) shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanours, and apprehending offenders; and shall have "generally all the powers and privileges, and be liable to all the duties and responsibilities which belong *by law to constables duly appointed.*" Where police officers are by statute invested with the powers of peace officers, or conservators of the peace, they have power to arrest certain offenders on view. Bac. Ab. "Constable," C.; 1 Hale, P. C. 587; *Taylor* v. *Strong*, 3 Wend. (N. Y.)384; *Commonwealth* v. *Hastings*, 9 Metc. (Mass.) 259; *Bryan* v. *Bates*, 15 Ill. 87; *Main* v. *McCarty*, *Ib.*, 441; *Lafferty* v. *State*, 5 Harring. (Del.) 491. A constable may on view arrest persons engaged in a breach of the peace. *City Council* v. *Payne*, 2 Nott. & McCord, (S. C.) 475; *White* v. *Kent*, 11 Ohio, St. 550; *Thomas* v. *Ashland*, 12 Ohio, St. 127. Every person, *as well as constables*, present when a *felony* is committed or a dangerous wound given, not only may apprehend the offender, but is bound to do so. *Beckwith* v. *Philby*, 6 B. & C. 634; *Mathews* v. *Biddulph*, 3 M. & G. 390; 2 Hawk. ch. 12, sec. 1; 1 East. P. C. 377, sec. 1. If a private person be present at an affray, he may stay the affrayers until the heat is over, and then deliver them over to a constable, and he may stop others coming to join either party. *Timothy* v. *Simpson*, 1 C. M. & R. 757; *Ingle* v. *Bell*, 1 M. & W. 516; 2 Hawk. ch. 13, sec. 8; *Baynes* v. *Brewster*, 2 Q. B. 375; but where his purpose is not so much to prevent the breach of the peace as to prevent an interference with the continuance of the affray, the purpose is illegal. *Hickey* v. *Fitzgerald*, 41 U. C. Q. B. 303. So a private person may arrest after an affray, if there be reasonable ground to apprehend a renewal of it. *Price* v. *Seely*, 10 Cl. & Fin. 28. Any person may arrest any other person found committing any indictable offence in the night. R. S. C. c. 174, s. 27. Any peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any felony. *Ib.* sec. 28. Any person found committing an offence, punishable either by indictment or upon summary conviction, may be immediately arrested by any peace officer, without a warrant, or by the owner of the property on or with respect to which it is being committed, or by his servant, or by any other person authorized by the owner. *Ib.* sec. 24. Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of *The Larceny Act*, or *The Act respecting the protection of the Property of Seamen in the Navy* may be immediately arrested without a warrant by any person. *Ib.* sec.

not less in number than the board reports to be absolutely required; but this section shall not affect or apply to a city in which, by the special Act of incorporation thereof, provision is made for the appointment, control and management of the police by the council. 46 V. c. 18, s. 441.

441. The members of the police force shall be appointed by and hold their offices at the pleasure of the board, (*r*) and

Appointment of members of police force.

25. If any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may arrest the offender. *Ib.* sec. 26. It is not suspecting that gives the right to arrest, but good reason or good cause to suspect, and the reason or cause would appear to be traversable. See *Reg.* v. *Tooley*, 11 Mod. 242, 248; *S. C.* 2 Ld. Rayd. 1296, 1301. In ordinary cases, to justify an arrest by a police officer even for a misdemeanour, it is necessary that he should have the warrant with him at the time. *Reg.* v. *Chapman*, 12 Cox, C. C. 4. A constable has a right without a warrant to enter any house (the door of which is unfastened) in which there is a noise amounting to a breach of the peace, and to arrest any person there disturbing the peace in his presence. *Commonwealth* v. *Tobin*, 11 Am. 375. It is no part of a police constable's duty as such to assist the occupier of a house in putting out an intruder. *Reg.* v. *Roxburgh*, 12 Cox, C. C. 8, yet he may lawfully do so. *Ib.* If a private individual state facts to a constable, who thereupon, on his own responsibility, arrests a person, or if he procure a magistrate to issue a warrant for taking a person, the imprisonment is not his act. *Barber* v. *Rollinson*, 1 C. & M. 330; *Stonehouse* v. *Elliott*, 6 T. R. 315; *Brandt* v. *Craddock*, 27 L. J. Ex. 314; *Grinham* v. *Willey*, 4 H. & N. 496. A constable is justified in arresting without a warrant upon a reasonable suspicion of a *felony* having been committed and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or facts stated to him by another. *Lawrence* v. *Hedger*, 3 Taunt. 14; *Davis* v. *Russell*, 5 Bing. 355; *Beckwith* v. *Philby*, 6 B. & C. 635; *Hogg* v. *Ward*, 3 H. & N. 417. But a constable is not in general justified in arresting a person who frequents a highway with intent to commit a felony. *Re Timson*, L. R. 5 Ex. 257; see also, *In re Jones*, 7 Ex. 586, or in arresting a person for a *misdemeanor* without a warrant, *Matthews* v. *Biddulph*, 3 M. & G. 390; *Griffin* v. *Coleman*, 4 H. & N. 265; see sec. 449; unless there be a breach of the peace in his presence, *Timothy* v. *Simpson*, 1 C. M. & R. 757; *Derecourt* v. *Corbishley*, 5 El. & B. 188, or danger of a renewal of it. *Reg.* v. *Light*, 27 L. J. Mag. Cas. 1; *Reg.* v. *Walker*, 23 L. J. Mag. Cas. 123. See also, *Pesterfield* v. *Vickers*, 3 Coldw. (Tenn.) 205. It would seem that a constable, having a warrant to arrest, is not bound to accept a tender of the fine and costs. See *Arnott* v. *Bradley*, 23 U. C. C. P. 1. He cannot arrest on the mere statement that a person is insane, it must also be stated that the person is dangerous. *Look* v. *Dean*, 11 Am. 323. See further, *Brock* v. *Stimson*, *Ib.* 390.

(*r*) The power to appoint involves the power to remove, so it is

shall take and subscribe the following oath :— (*s*)

Oath of office.

I *A. B.*, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of police constable for the of without favour or affection, malice or ill-will ; and that I will to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects ; and that while I continue to hold the said office, I will to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

46 V. c. 18, s. 442.

Board to make regulations.

442. The board shall, from time to time make such regulations as they may deem expedient for the government of the force, and for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties. (*t*) 46 V. c. 18, s. 443.

Constables to be subject to the Board.

Duties of constables.

443. The constables shall obey all lawful directions, and be subject to the government of the board, and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders ; and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to constables duly appointed. (*u*) 46 V. c. 18, s. 444.

Remuneration and contingent expenses.

444. The council shall appropriate and pay such remuneration for and to the respective members of the force as may be required by the board of commissioners of police ; and

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declared that the members of the force shall "hold their offices at the pleasure of the board." It was at one time held that the board had no power to fix the salaries or remuneration of the members of the force." *In re Prince and Toronto*, 25 U. C. Q. B. 175, but the law is now altered. See sec. 444. The members of the force are in all things made subject to the government of the board. See secs. 442 and 443. Until the organization of the board they may be suspended by the police magistrate or mayor. Sec. 450.

(*s*) The taking of the oath is obligatory, and it must not only be taken but subscribed. An assault upon a constable in the discharge of his duty is indictable, although he never took the oath of office. *Buttrick* v. *Lowell*, 1 Allen (Mass.) 172 ; *Mitchell* v. *Rockland*, 52 Maine 118.

(*u*) There *may* be a wide difference between "a police officer" and "a constable," see note *p* to sec. 439 ; but under the operation of the section here annotated there can be little, for it is specially declared among other things, that the constables shall have generally all the powers which "belong by law" to constables duly appointed.

shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries as the Board may from time to time deem requisite and require for the payment, accommodation and use of the force; but this section shall not affect or apply to any city in which by the special Act of incorporation thereof provision is made for the appointment control and management of the police by the council. (*v*) 46 V. c. 18, s. 445.

Constables in towns and villages.

445. The council of every town not having a board of commissioners of police (*w*) shall, and the council of every incorporated village may, (*x*) appoint one chief constable, and one or more constables for the municipality; (*y*) and the per-

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(*v*) It would only be proper for the board to furnish to the city council some details of the proposed expenditure, shewing that it will come under one or other of the heads authorized by this section. See *In re Trustees of Brockville*, 9 U. C. Q. B. 302; *In re Trustees of Port Hope*, 4 U. C. C. P. 418; *In re Board of School Trustees of Toronto*, *Ib.* 23 U. C. Q. B. 203; *In re Coleman* v. *Kerr*, 27 U. C. Q. B. 5; *In re School Trustees of Mount Forest* v. *Mount Forest*, 29 U. C. Q. B. 422. But it is to be noted that no provision is made in express terms for the giving of an estimate to the corporation. See *In re Port Rowan High School* v. *Walsingham*, 23 U. C. C. P. 11. The Court, on a motion for a mandamus, is not bound to consider objections, well or ill founded, to certain items in the estimate of the board. An objection to particular items can form no reason for withholding, arbitrarily and without explanation, every part of an estimate. A different course would have to be taken to raise such an objection. *In re Board of School Trustees of Toronto*, 23 U. C. Q. B. 203. If the council wholly neglect and refuse to appropriate or pay, as required by the board of commissioners of police, for the purposes mentioned, there would be a remedy. See *In re Board of School Trustees of Toronto*, 23 U. C. Q. B. 203. The council is not bound to follow the dictation of the board as to the manner of procuring the money. *Ib.* It may be that the council has surplus funds in hand to meet demands without levying a rate. If so, the levying of a rate, even though asked by the board, would be unnecessary. See *School Trustees and Galt*, 13 U. C. Q. B. 511, 521. Formerly the board of commissioners had not power to fix the remuneration, and when the law was so the Court refused to interfere to compel the council to pay the remuneration fixed by the board. *In re Prince and Toronto*, 25 U. C. Q. B. 175. See also sec. 448.

(*w*) See note *d* to sec. 416.

(*x*) The council of a town not having a board of commissioners must appoint, but the council of an incorporated village may, if it see fit, appoint. In the case of the former the duty is imperative. In the case of the latter the duty is discretionary.

(*y*) See note *q* to s: 440.

sons so appointed shall hold office during the pleasure of the council. (z) 46 V. c. 18, s. 446.

Dissolution of boards of police commissioners in towns.

446. Where in a town there was on the 24th day of March 1874, a board of commissioners of police constituted under the Acts then in force respecting municipal institutions in this Province, the council of the said town may by by-law dissolve and put an end to the board, and thereafter the council shall have and exercise all powers and duties which might, under said Acts, have been had or exercised by the board; and unless and until so dissolved and put an end to, the board shall have and exercise all the powers and duties which, but for this section, would have been exercised or had by the board. 46 V. c. 18, s. 447.

County and township constables.

447. The council of every county and township may appoint one or more salaried constables for the municipality, to hold office during the pleasure of the council; every such constable, and any city, town or village constable shall have the same

Their powers.

powers and privileges, and be subject to the same liability and to the performance of the same duties, and shall be subject also to suspension by the Judge of the County Court in the same manner, and may act within the same limits, as a constable appointed by the Court of General Sessions. 47 V. c. 32, s. 23 (1).

Rights of salaried constables to fees.

448. Where any salaried constable is appointed for any municipality, whether by the municipal council or by police commissioners, the council may agree that such constable shall keep, for his own use, his fees of office, or the council may require that the said fees shall be paid to the municipal treasurer for the use of the municipality. (a) 47 V. c. 32, s. 23 (2).

Arrests by constables for alleged breaches of the peace not

449. In case any person complains to a chief of police, or to a constable in a town or city, of a breach of the peace having been committed, (b) and in case such officer has reason

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(z) See note *r* to sec. 441.

(a) See *Corporation of Stratford* v. *Wilson*, 8 O. R. 104.

(b) The object of this section is to remove doubts as to the authority of the peace officers named to make arrests without warrant for *misdemeanors* not committed within their view. See note *q* to sec. 440. Caution must, however, be exercised in making arrests under such circumstances. A magistrate's warrant is a great shield. Where an arrest is made without it, if it should turn out that the provisions

to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape or to prevent a renewal of a breach of the peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the mayor or sitting Justice, such officer may, without warrant, (*c*) arrest the person charged in order to his being conveyed as soon as conveniently may be before the Magistrate, Mayor or Justice, to be dealt with according to law. 46 V. c. 18, s. 448.

committed in their presence.

450. Until the organization of a board of police, every mayor or Police Magistrate may, within his jurisdiction, suspend from office, for any period in his discretion, the chief constable, or any constable of the town or city, and may, if he chooses, appoint some other person to the office during such period; and in case he considers the suspended officer deserving of dismissal, he shall, immediately after suspending him, report the case to the council, and the council may dismiss such officer, or may direct him to be restored to his office after the period of his suspension has expired; (*e*) and the city council shall have the like powers as to the high bailiff of the city. (*f*) 46 V. c. 18, s. 449.

Until a board of police is organized, mayor, &c., may suspend chief constable, &c., from office, &c.

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of this section have been neglected, that the wrong person is arrested, the officer might be held liable to an action for false imprisonment.

(*c*) Statutes authorizing police officers to make arrests without warrant, being in derogation of personal liberty, should be strictly construed. *Low* v. *Evans*, 16 Ind. 486; *How* v. *Beckner*, 3 Ind. 475; *Vandeveer* v. *Mattocks*, *Ib.* 479. Although police constables may arrest without warrant for crimes, it does not follow that they have the power to do so in the case of lesser offences. See *Galliard* v. *Laxton*, 2 B. & S. 361; *Reg.* v. *Chapman*, 12 Cox 4; *Codd* v. *Cabe*, 13 Cox. 202, *S. C.* 1 Ex. D. 352.

(*e*) During the suspension the suspended officer is incapable of acting in his office except by the written permission of the mayor or Police Magistrate who suspended him, and is deprived during that period of all salary or remuneration. Sec. 451. The restoration to office is only to take place "after" the period of his suspension has expired. If a person be illegally suspended from the duties of his office, it may be that a mandamus will lie for his restoration, *sed qu.* when the office is one during pleasure. See *Rex* v. *Barker*, 3 Burr. 1266; Willcocks' Municipal Corporations, 368, pl. 74, 75; *Ib.* 377, pl. 96; Angell & Ames on Corporations, secs. 702, 706; 3 Bl. Com. 110.

(*f*) The power of appointment of the high bailiff is vested in the

Incapacity of such officer to act.

Salary to cease.

451. During the suspension of such officer he shall not be capable of acting in his office except by the written permission of the Mayor or Police Magistrate who suspended him, nor during such suspension shall he be entitled to any salary or remuneration. (*h*) 46 V. c. 18, s. 450.

DIVISION X—COURT-HOUSES, GAOLS AND PLACES OF IMPRISONMENT.

Erection and care of. *Secs.* 452-469, 472-475.
Furniture. *Sec.* 470.
Insurable Interest of Corporations. *Sec.* 471.
Expense of prisoners. *Sec.* 476.

County council may pass by-laws as to county buildings:

452. Every county council may pass by-laws for erecting, improving and repairing a court house, gaol, house of correction, and house of industry, (*a*) upon land being the property of the municipality, and shall preserve and keep the same in repair, and provide the food, fuel and other supplies required for the same. 46 V. c. 18, s. 451.

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council of the city. Sec. 439. The power of suspension from duty is therefore properly vested, by this section, in the same body.

(*h*) When restored, his restoration can only take effect "after the period of his suspension has expired." The suspension is therefore a deprivation of office for some certain period. During that period another may be appointed to the office. See sec. 450. That other, if appointed, would, in the absence of agreement to the contrary, be entitled to the salary or remuneration.

(*a*) The court house, from its very name as well as from the provisions of law requiring the erection of a gaol and court house in every county or union of counties before they are constituted separate municipal authorities, (see sec. 43), is a building devoted to and intended for certain public uses. The municipal corporation may be considered as holding the building, for and subject to these uses, and would be guilty of a breach of trust and, as regards the Courts of Justice, of a high contempt, if they pretended to prevent its use for such purposes. *Per* Draper, C. J., in *Huron and Bruce* v. *Macdonald*, 7 U. C. C. P. 280. Gaols have always been considered of such universal concern to the public, that until powers were conferred upon municipal corporations to erect them, none could be erected except by authority of Parliament. *Rex* v. *Newcastle*, Dra. 214; see also *Reg.* v. *Lancashire*, 11 A. & E. 144. But now, where a municipal corporation, having power, authorizes the building of a gaol and court house, the builder may, on the completion of the work, sue the corporation for his money. *Keating* v. *Simcoe*, 1 U. C. Q. B. 28, even though there be no contract under seal. *Pim* v. *Ontario*, 9 U. C. C. P. 302, 304. But see *Silsby* v. *Corporation of Dunnville*, 8 A. R. 524. The corporation, however, is not liable to be sued for the

And for acquiring land for court-house in cities.

453. Every county council may when a court house is required to be erected within the limits of a city, pass by-laws for entering upon, taking, using, and acquiring, such land as may be necessary or convenient for the purposes of such court house. 46 V. c. 18, s. 452.

Gaols and court-houses in counties and cities, &c., not separated.

454. The gaol, court house and house of correction of the county in which a town or city, not separated for all purposes from a county, (*b*) is situate, shall also be the gaol, court house, and house of correction of the town or city, and shall in the case of such city, continue to be so until the council of the city otherwise directs; and the sheriff, gaoler, and keeper of the gaol and house of correction shall receive and safely keep, until duly discharged, all persons committed thereto by any competent authority of the town or city. (*c*) 46 V. c. 18, s. 453.

City councils may erect, &c., certain public buildings.

455. The council of any city may erect, preserve, improve and provide for the proper keeping of a court house, gaol,

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use and occupation of a room engaged by the sheriff for the purposes of a court room, *Dark* v. *Huron and Bruce*, 7 U. C. C. P. 378, nor for furniture supplied to the court house on the order of magistrates in Quarter Sessions. *In re Coombs and Middlesex*, 15 U. C. Q. B. 367. The fact that the court house is also used as a shire hall for the sittings of the county council, and the furniture made use of by them, can make no difference. *Ib.* Formerly, the responsibility of keeping the court house in repair was thrown on the district surveyor; and when the law was so, it was held that the municipal corporation was not liable in damages for an injury resulting in death, occasioned to an individual in walking up the court house steps, which had been allowed to fall into an unsafe condition. *Hawkeshaw* v. *Dalhousie*, 7 U. C. Q. B 590. The Court has refused a rule for a mandamus to compel a county council to build a court house. *Justices of the District of Huron* v. *Huron District Council*, 5 U. C. Q. B. 574. In case the inspector of prisons shall at any time find that the common gaol in any county or city is out of repair, or has become unsafe or unfit for the confinement of prisoners, or is not constructed or maintained in conformity with the statute, or that the same does not afford sufficient space or room for the number of prisoners usually confined therein, the County may now be compelled by mandamus to make the necessary repairs. Rev. Stat. c. 250, s. 24. Similar provisions as to court houses are made by sec. 26.

(*b*) Where a city or town is separated for *all* purposes from the county in which situate, this section would be inapplicable.

(*c*) If the committal be for a certain time, unless a fine and costs or a fine or costs be sooner paid, the sheriff, gaoler or keeper to whom the warrant is directed should be careful not to detain the prisoner after payment or tender of the money. See *Smith* v. *Sibson*, 1 Wils. 153; *Chaddock* v. *Wilbraham*, 5 C. B. 645, 650; aud *Walsh* v. *Southworth*, 6 Ex. 150.

house of correction and house of industry upon lands being the property of the municipality, (*e*) and may pass by-laws for all or any of such purposes. (*f*) 46 V. c. 18, s. 454.

Lock-up houses may be established by county councils.

456. The council of every county may establish and maintain a lock-up house or lock-up houses within the county, (*g*) and may establish and provide for the salary or fees to be paid to the constable to be placed in charge of every such lock-up house, and may direct the payment of the salary out of the funds of the county. 46 V. c. 18, s. 455.

A constable to be placed in charge.

457. Every lock-up house shall be placed in the charge of a constable specially appointed for that purpose by the Magistrates of the county at a General Sessions of the Peace therefor. (*h*) 46 V. c. 18, 456.

Lock-up houses.

458. The council of every city, township, town, and incorporated village (*i*) may, by by-law, establish, maintain and regulate lock-up houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any by-law of the council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any common gaol or house of correction, either for trial or in the execution of any sentence; (*k*) and such councils shall

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(*e*) The gaol, court-house and house of correction of the county in which a city is situate is to be the gaol, court house and house of correction of the city, till the latter municipality otherwise direct. Sec. 454.

(*f*) See note *a* to sec. 452.

(*g*) A "Lock-up House" is a place for the temporary confinement of a prisoner, or of a prisoner committed for a short space of time. The gaol is for the whole county, but in each county or union of counties there can be only one gaol, and that situate in the county town. But there may be several lock-up houses, and situate where most convenient. Councils of *counties* only are by this section authorized to establish lock-up houses. See secs. 458, 459, as to cities, townships, towns and incorporated villages. As to the duty of maintaining these places of imprisonment, see *Crawford* v. *Beattie*, 39 U. C. Q. B. 31.

(*h*) While the gaol is to be placed in the care of the sheriff, sec. 464, each lock-up is to be placed in charge of a constable, *specially* appointed for that purpose by the Magistrates at a General Sessions of the Peace.

(*i*) Counties have the power under a different section. Sec. 456.

(*k*) In no case should the detainer in the lock-up of persons be longer than mentioned, or for any other purpose than mentioned.

have all the powers and authorities conferred on county councils in relation to lock-up houses. (*l*) 46 V. c. 18, s. 457.

Joint lock-up houses.

459. Two or more municipalities may unite to establish and maintain a lock-up house. (*m*) 46 V. c. 18, s. 458.

Land may be acquired for industrial farms, house of industry, refuge, &c.

460—(1) The council of every county, city or town separated from a county may acquire an estate in landed property for an industrial farm, and may establish a house of industry and a house of refuge, and provide by by-law for the erection and repair thereof, and for the appointment, payment and duties of inspectors, keepers, matrons and other servants for the superintendence, care and management of such houses of industry or refuge, and in like manner make rules and regulations (not repugnant to law) for the government of the same. (*n*)

Proviso as to united or contiguous counties.

(2) Two or more united counties, or two or more contiguous counties, or a city and one or more counties, or a town and one or more counties, may agree to have only one house of industry or refuge for such united or contiguous counties, or city and counties, or town and counties, and maintain and keep up the same in the manner herein provided. (*o*)

Power to compel persons sent to industrial farms, &c,

(3) The council may provide, by by-law, for requiring such persons as may be sent to such industrial farm or other place, to work on the said farm, or at any work or service for

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Excess in any of these particulars may subject the persons concerned to an action of trespass. See *Atkins* v. *Kilby*, 11 A. & E. 777. The committing magistrate is not in general liable for the sufferings of a person committed to the lock-up, when that lock-up is not in a fit condition to receive inmates. *Crawford* v. *Beattie*, 39 U. C. Q. B. 31.

(*l*) See sec. 456.

(*m*) The power to unite in establishing and maintaining a lock-up, it is apprehended, includes the power to make a valid agreement as to the terms on which each shall contribute towards its establishment and maintenance. The keeper of a county lock-up may be paid either by salary or fees.

(*n*) At first these powers were only permissive (Con. Stat. U. C. ch. 54, secs. 415, 419); then compulsory, 29 & 30 Vict. ch. 51, sec. 413; and now again permissive. As the names indicate, Houses of Industry and Refuge are intended for the poor, the destitute, and the idle.

(*o*) See note *m*, supra.

to work thereon.

the said municipality, at such times, and for such hours, and at such trade or labour as they may appear to be adapted for respectively, and for buying and selling material therefor, and for applying the earnings, or parts thereof, of such persons for their maintenance or the maintenance of the wife and child or wife or children (if any) of such persons, or for the general maintenance of the farm or other place as aforesaid, or for aiding such persons to reach their friends (if any) or any place to which it may be deemed advisable to send them. 46 V. c. 18, s. 459.

(4) Any two or more local municipalities shall have the same powers and rights as to acquiring, holding and maintaining an industrial farm, or acquiring, erecting and maintaining a house of industry or refuge as any county or city or united or contiguous counties or city or town and county now have under and by virtue of this Act or otherwise, and may arrange with any other local municipality or municipalities for the admission upon such terms and conditions as may be agreed upon between them, of such other local municipality or municipalities to a joint ownership or occupancy or right of user by said other municipality or municipalities in or of said farm, house of industry or refuge. Any purchase or grant to or acquisition by two or more local municipalities of any such farm, or the erection of any such house of industry or refuge, or any agreement or by-law therefor, or any agreement or by-law for the admission of any other local municipality to such joint ownership or right of user or occupation made, entered into or passed before the passing of this Act shall be as valid and binding for all purposes as though made, entered into or passed after the passing hereof.

(5) All the provisions of this Act relating to industrial farms, houses of industry or houses of refuge respectively, shall apply to any such local municipalities and to any industrial farm, house of industry or house of refuge acquired, erected, occupied or maintained thereby as fully as to any other municipality or municipalities in the preceding sub-section mentioned, or to any industrial farm, house of industry or house of refuge acquired, owned, erected, occupied or maintained by them, or any of them. 51 V. c. 28, s. 18.

Inspectors to keep and render accounts of expenses, &c.

461. The inspector of a house of industry or refuge appointed as aforesaid, shall keep an account of the charges of erecting, keeping, upholding and maintaining the house of industry or refuge, and of all materials found and furnished

therefor, together with the names of the persons received into the house, as well as of those discharged therefrom, and also of the earnings; and such account shall be rendered to the county council every year, or oftener when required by a by-law of the council; (*q*) and a copy thereof shall be presented to the Legislature. 46 V. c. 18, s. 460.

462. The council of every city and town may respectively pass by-laws: By-laws may be passed establishing workhouses and houses of correction.

1. For erecting and establishing within the city or town, or on such industrial farm, or on any ground held by the corporation for public exhibitions, a work-house or house of correction, and for regulating the government thereof;

2. For committing and sending, with or without hard labour, to the workhouse, or house of correction, or to the industrial farm, house of industry, house of refuge, or house for the poor, aged and infirm, or lock-up, or to any work or service for the municipality as aforesaid, by the mayor, police magistrate, or justice of the peace, while having jurisdiction in the municipality, such disorderly persons, drunkards, vagrants, indigent persons, and such description of persons as are set forth or referred to in section 369 of chapter 48 of the Acts passed in the 36th year of Her Majesty's reign (*r*) and as may by the council be deemed, and by by-law be declared expedient; (*s*) and such farm, house of correction, house of industry, house of refuge, or house for the poor, aged or infirm, lock-up house or ground held as aforesaid shall, for the purposes in this subsection mentioned, be Who liable to be committed thereto. 36 V. c. 48, s. 369.

(*q*) The duty to render the account to the county council, is made to depend on the passing of a by-law.

(*r*) The persons specified in 36 V. c. 48, s. 369, are: (1) All poor and indigent persons who are incapable of supporting themselves; (2) All persons without the means of maintaining themselves, and able of body to work, and who refuse or neglect so to do; (3) All persons leading a lewd, dissolute or vagrant life, and exercising no ordinary calling, or lawful business sufficient to gain or procure an honest living; (4) And all such as spend their time and property in public houses, to the neglect of any lawful calling: (5) And idiots. *See* also R. S. C. c. 157, s. 8, as to the persons who are to be deemed vagrants.

(*s*) Workhouses or houses of correction are intended to be places of punishment, for the commitment thereto may be "with or without hard labour." The description of persons liable to be so committed is left to the determination of the council by by-law.

deemed to be within the municipality and the jurisdiction thereof. (*t*) 46 V. c. 18, s. 461.

3. For erecting and establishing within a city having a population of 50,000 and upwards an institution for the reclamation and cure of habitual drunkards.

4. For committing and sending with or without hard labour to the institution for the reclamation and cure of habitual drunkards by the mayor, Police Magistrate or Justice of the Peace, while having jurisdiction in the municipality, such drunkards as are set forth or referred to in section 369 of chapter 48 of the Acts passed in the 36th year of Her Majesty's reign, and as may by the council be deemed and by by-law be declared expedient.

5. In the event of any city establishing an institution for the reclamation and cure of habitual drunkards under the provisions of this Act, sections 97 to 108, both inclusive, of chapter 246 of the Revised Statutes of Ontario, 1887, shall be applicable thereto as if such institution had been named in said Act. 51 V. c. 28, s. 19.

Until houses of correction, erected, the common gaols are constituted houses of correction.

463. Until separate houses of correction are erected in the several counties in Ontario, the common gaol in each county respectively shall be a house of correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a house of correction, shall, unless otherwise provided by law, be committed to the said common gaols respectively. (*u*) 46 V. c. 18, s. 462.

Custody of gaols.

464.—(1) The sheriff shall have the care of the county gaol, gaol offices and yard, and gaoler's apartments, and the appoint-

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(*t*) Municipal councils cannot in general acquire property for any purpose without the limits of the municipality. Here the power is to erect and establish a workhouse "within or without" the city or town. But for all the purposes of the section the property is, for obvious reasons, to be deemed to be within the city or town, and the jurisdiction thereof. See note *k* to sec. 20, and note *b* to sec. 282.

(*u*) Gaols are designed for the imprisonment of criminals where reformation may or may not be an object of the imposition of punishment, but where the person, although not a criminal, is idle, disorderly, a rogue or a vagabond, the house of correction, if any, is the proper place for his incarceration. The county gaol is to be used for such a purpose only where, in the particular county, there is no house of correction. See note *r* to sec. 462.

ment of the keepers thereof, (*a*) whose salaries shall be fixed by the county council, subject to the revision or requirement of the Inspector of Prisons and Public Charities. (*b*). Keepers.

(2) Every appointment, or dismissal, of a gaoler shall be subject to the approval of the Lieutenant-Governor. 46 V. c. 18, s. 463. Appointment and dismissal of gaolers.

465. The salary of the gaoler shall be in lieu of all fees, perquisites or impositions of any sort or kind whatever; and no gaoler or officer belonging to the gaol shall demand or receive any fee, perquisite or other payment from any prisoner confined within the gaol or prison. (*c*) 46 V. c. 18, s. 464. Gaoler to have a yearly salary in place of all fees, perquisites or impositions whatever.

466. The county council shall have the care of the court house and of all offices and rooms and grounds connected therewith, whether the same forms a separate building or is connected with the gaol, (*d*) and shall have the appointment of the keepers thereof, whose duty it shall be to attend to the proper lighting, heating and cleaning thereof; and shall from time to time provide all necessary and proper accommodation, County council to have care of court-house, &c.

(*a*) Some disputes having hitherto existed between sheriffs and municipal councils, arising out of a real or supposed conflict of jurisdiction as to court houses and gaols; See *Huron and Bruce* v. *Macdonald*, 7 U. C. C. P. 278, the object of this and the three following sections is, so far as language can do so, to remove all cause of dispute- Though it is by sec, 452 enacted that the county council may pass by-laws for erecting, improving, and repairing the gaol, &c., and shall preserve and keep it in repair, and provide the fuel, food, and other supplies required, it is here enacted that the sheriff shall have the *care* of the gaol, gaol offices and yard, and gaoler's apartments, and the *appointment* of the keepers. While upon the council rests the responsibility of keeping the building, &c., in repair, and of providing the necessaries, upon the sheriff rests the responsibility of management and internal government.

(*b*) It is not said who is to decide as to the number of keepers. The keepers are necessary for the care of the gaol. As the care of the goal is cast on the sheriff it is presumed that he must decide as to the number of keepers, but that their salaries shall be fixed by the county council. Should the salaries be fixed at such a sum as to render it impossible to obtain fit men for the office an appeal to the Inspector of Prisons and Public Charities, is provided.

(*c*) See note *q* to s. 411.

(*d*) A public officer suffering loss through the failure of the municipal council to provide proper office accommodation, has an action for the recovery of damages against the municipal corporation. *Lees* v. *Carleton*, 33 U. C. Q. B. 409; see further, *Griffin* v. *City of Hamilton*, 37 U. C. Q. B. 519.

fuel, light and furniture for the Courts of Justice other than the Division Courts, and for the library of the law association of the county (such last mentioned accommodation to be provided in the court house), and shall provide proper offices, together with fuel, light and furniture, for all officers connected with such Courts other than (1) officers of the Maritime Court of Ontario (not being in the county of York) and (2) official assignees. 46 V. c. 18, s. 465; 48 V. c. 39, ss. 11, 13.

City gaols to be regulated by by-laws of city council.

467. In any city not being a separate county for all purposes, (*e*) but having a gaol or court house separate from the county gaol or court house, the care of such city gaol or court house shall be regulated by the by-laws of the city council. 46 V. c. 18, s. 467.

Upon separation of union of counties, gaol and court-house regulations to continue.

468. In case of a separation of a union of counties, (*f*) all rules and regulations, and all matters and things in any statute for the regulation of, or relating to court houses or gaols in force at the time of the separation, shall extend to the court house and gaol of the junior county. 46 V. c. 18, s. 468.

Liability of cities and towns separated from counties for erection and maintenance of court-house, &c.

469. Cities and towns separated from counties shall, as parts of their respective counties for judicial purposes, (*g*) bear and pay their just share or proportion of all charges and expenses from time to time as the same may be incurred in erecting, building and repairing and maintaining the court house and gaol of their respective counties, (*h*) and of the proper lighting, cleansing and heating thereof, and of providing all necessary and proper accommodation, fuel, light, and furniture for the gaol and courts of justice, other than the Division Courts, and for the library of the law association of the county and of providing proper offices, together with fuel, light, and furniture for officers connected with such Courts, (*i*) where the same are required to be provided by the county

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(*e*) Every city is a county of itself for municipal purposes. See *Reg.* v. *Smith*, 7 U. C. L. J. 66; *Reg. ex rel. Blasdell* v. *Rochester*, *Ib.*, 101, 102.

(*f*) See sec. 38, *et seq.*

(*g*) Though there is a separation for municipal, there is not for judicial purposes.

(*h*) See note *a* to sec. 473.

(*i*) The addition of the proper lighting, cleansing and heating, and of providing all necessary and proper accommodation, fuel, light and furniture for the gaol and courts of justice (other than the Division

council; and all other charges relating to criminal justice, payable by the county in the first instance, except constables' fees and disbursements, and charges connected with coroners' inquests, and such other charges as the counties are entitled to be repaid by the Province; and in case the council of the city or town separate as aforesaid, and the council of the county in which such city or town is situate for judicial purposes cannot, by agreement from time to time, settle and determine the amount to be so payable by such city or town respectively, then the same shall be determined by arbitration, according to the provisions of this Act. (*j*) 46 V. c. 18, s. 469; 48 V. c. 39, s. 12.

Reference to arbitration in case of disagreement.

470. The council shall not be liable to pay for any furniture which they are required to provide under the provisions of sections 466 and 469 of this Act, unless the same has been ordered by the council or by some person duly authorized by them so to do. 46 V. c. 18, s. 470.

Liability for furniture for use of county officials.

471. The corporation of any county and city or town separated from the county, are hereby declared to have, respectively, insurable interests in the court house and gaol of the county and the furniture thereof, in the proportions in which they shall, for the time being, be liable to contribute towards the erection, building, repairing, and maintaining the same, and towards providing necessary accommodation and furniture for the said gaol and Courts of justice, and for the officers connected with such Courts, and any such corporation may insure its said interest accordingly. 46 V. c. 18, s. 471.

Insurable interests of corporations in certain cases.

472. In all cases in which any city is required to contribute to the cost of erecting or building a court house or gaol, not commenced before the 5th day of March, 1880, the council of such city shall not be bound to pay for any part of the expenditure thereafter incurred in respect thereof, unless the same has been concurred in by the council of the city, or, in case of dispute, has been determined by arbitration, according to the provisions of this Act, (*j*) and the council of the city shall have a voice in the selection of the site of the court house and gaol; and in case the council of the county and

Liability of city to contribute to cost of erecting court-houses and gaols.

Courts), and for all officers connected with such courts, was first made by 39 Vict. c. 34, s. 1.

(*j*) See note *c* to sec. 473.

city shall fail to agree upon the selection of such site, the same shall be settled and determined by arbitration, according to the provisions of this Act. 46 V. c. 18, s. 472.

Compensation by city or town for use of court-house, &c.

473.—(1) While a city or town uses the court house, gaol or house of correction of the county, the city or town shall pay to the county such compensation therefor, (*a*) and for the care and maintenance of prisoners as may be mutually agreed upon, (*b*) or settled by arbitration under this Act. (*c*) 46 V. c. 18, s. 473.

(*a*) In consequence of the separation of the city of Toronto from the county of York for judicial purposes, a deed was executed between the respective corporations, in which the city covenanted to pay the county a certain annual sum for the use of the court house. The deed also contained other agreements as to the use of the gaol. This arrangement was to continue in force until twelve months' notice to determine it should be given. By the Law Reform Act, which came into force in February. 1869, the city was re-united to the county for judicial purposes, and on the 21st March, 1869, the city gave the county the stipulated notice as to intended discontinuance of the use of the gaol, stating that, as to the court-house, the action of the Legislature had virtually terminated the provision respecting it, and that no further payment would therefore be made. *Held*, that the contention of the city was correct; that it had been released from its covenant to pay by the operation of the Law Reform Act; and that there was no legal liability on the part of the city even for an aliquot portion of the half-year's rent which would have become due on the 21st March following. *Toronto* v. *York*, 21 U. C. C. P. 95. And it was afterwards held, in a subsequent suit between the same parties, that in the absence of express legislation, the city was not bound to pay the county any compensation whatever for the use of the court house. *S. C.* 22 U. C. C. P. 514.

(*b*) *Agreed upon.* It would be well that the agreement should be by deed or by a By-law under seal, but where the contract is shewn to be an executed one, proof of such an agreement or by-law is unnecessary. *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585.

(*c*) Arbitrators were appointed by articles of agreement, dated 28th December, 1855, to settle certain differences recited as pending between the city of London and the county of Middlesex, respecting the compensation to be paid by the city to the county for the use of the county court house and gaol, and concerning certain financial matters then depending between the respective municipalities. On the same day they awarded, first, that the stock held by the county in certain railways should be divided in the proportion of one-fifth to be transferred to the city, the remaining four-fifths still to belong to the county; secondly, that the city should pay the county £2,675 on account of the county roads, and should keep such roads in repair within the city limits; thirdly, that the city should pay the county £1,966 in full of its portion of the county debt; fourthly, that in future each of the municipalities should pay the

(2) In case of arbitration under the preceding provisions of this section, in determining the compensation to be paid for the care and maintenance of prisoners confined in the gaol, the arbitrators shall, so far as they deem the same just and reasonable, take into consideration the original cost of the site and erection of the gaol buildings, and of repairs and insurance, so far as the same may have been borne or sustained by one or other of the municipalities, and shall also take into consideration the cost of maintaining and supporting the prisoners, as well as the salaries of all officers and servants connected therewith ; but the provisions of this sub-section shall apply only to the determining of the compensation to be paid for the care and maintenance of any such prisoners

Matters to be considered in determining compensation.

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expense of all prisoners committed to the county gaol by each of them respectively, and that the portion of such expense incurred by the city should be paid over by them in January of each year ; fifthly, that in future the city should pay to the county one-third of all incidental expenses connected with the court house and gaol, including repairs and insurance, together with one third of all expenses connected with the administration of justice not paid by Government such payment to be made in the month of January in each year ; sixthly, that the city should pay to the county the sums mentioned in the first, second, and third clauses of the award, with interest, in twelve months from the 1st of January, 1856, except that the city council should pay its share of the railway stock at the time the county debentures given therefor should become payable ; seventhly, that the award should take effect on the 1st January, 1855, and remain in force till the 1st January, 1860. Held, that the giving to the award a retrospective effect—to the 1st January, 1855, being the time when London was declared a city—was not objectionable, but proper ; that the arbitrators had authority to give time for payment, as in the sixth clause ; that the limiting the continuance of the award till 1st January, 1860, was inconsistent with the 12 Vict. c. 81, s. 200 (so far as material the same as sec. 474 of this Act), and rendered the award bad as to the fourth and fifth clauses respecting the court house and gaol ; that the fourth clause of the award was also bad, because it authorized a ratable division of the expenses, instead of awarding the payment of an annual sum (*sed qu.* under this Act) ; that the fourth and fifth clauses might be separated from the rest, and the award be set aside as to them only. *In re Middlesex and London*, 14 U. C. Q. B. 334 ; *Wentworth* v. *Hamilton*, 34 U. C. Q. B. 585. In proceedings upon arbitration between a city and county under ss. 22, 445, 446 and 447 (same as ss. 25, 469, 473 and 474) the questions submitted are largely in the discretion of the arbitrators, no principle or rule being laid down by the statute. When, therefore, arbitrators in forming estimates of the proportion of expenditure to be borne by the city and county under these sections, took population as a basis instead of the assessment rolls, it was held that this was no ground for interference. *In re St. Catharines and the County of Lincoln*, 46 U. C. Q. B. 425.

subsequent to the first day of January, 1886. 49 V. c. 37, s. 10.

When the amount of compensation may be reconsidered.

474. In case after the lapse of five years from such compensation having been so agreed upon or awarded, or having been settled by statute, and whether before or after the passing of this Act, it appears reasonable to the Lieutenant-Governor in Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an Order in Council, direct that the then existing arrangement shall cease after a time named in the order, and after such time the councils shall settle anew, by agreement (*d*) or by arbitration under this Act, (*e*) the amount to be paid from the time so named in the order. 46 V. c. 18, s. 474.

Existing lock-up houses to continue.

475. Nothing herein contained shall affect any lock-up house heretofore lawfully established, but the same shall continue to be a lock-up house as if established under this Act. 46 V. c. 18, s. 475.

Expense of conveying and maintaining prisoners.

476. The expense of conveying any prisoner to, and of keeping him in a lock-up house, shall be defrayed in the same manner as the expense of conveying him to and keeping him in the common gaol of the county. (*f*) 46 V. c. 18, s. 477.

Division XI.—Investigation of Charges of Misconduct in relation to Municipal Matters.

Investigation by County Judge. Sec. 477.

Investigation by County

477.—(1) In case the council of any municipality at any time passes a resolution requesting the Judge of the County

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(*d*) See note *b* to sec. 473.

(*e*) See note *c* to sec. 473.

(*f*) The whole of the expenses of the administration of criminal justice in Ontario should be paid out of the Consolidated Revenue Fund of the Province. Rev. Stat. c. 86, s. 1. All accounts of or relative to such expenses, must be examined, audited, vouched and approved under such regulations as the Lieutenant-Governor in Council from time to time directs and appoints. *Ib.*, sec. 2. The several heads of expense mentioned in the schedule to the Act are deemed expenses of the administration of criminal justice within the meaning of the Act. *Ib.*, sec. 1. See *In re Pousett and Lambton*, 21 U. C. Q. B. 472; 22 U. C. Q. B. 80.

Court of the county in which the municipality is situate to investigate any matter to be mentioned in the resolution, (*g*) and relating to a supposed malfeasance, breach of trust or other misconduct (*h*) on the part of any member of the council or officer of the corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person, to the municipality, or in case the council of any municipality sees fit to cause inquiry to be made into or concerning any matter connected with the good government of the municipality, or the conduct of any part of the public business thereof, (*i*) and if the council at any time passes a resolution requesting the Judge to make the inquiry, the Judge shall inquire into the same, and shall for that purpose have all the powers which may be conferred upon commissioners under *The Act respecting inquiries concerning Public Matters*, (*j*) and the Judge shall, with all convenient speed, report to the council the re-

Judge of charges of malfeasance by municipal officers.

Judge to have powers mentioned in Rev. Stat. c. 17.

(*g*) See sec. 383 as to inquiries into the financial affairs of the corporation.

(*h*) "Or other misconduct." What is here meant, no doubt, is misconduct in the nature of malfeasance or breach of trust of some kind, appertaining to the duties of the office. According to the general construction of Statutes, where general words follow particular words, they are to be construed as *ejusdem generis* with the particular words which have preceded them. *Rex* v. *Manchester and Salford Water Works Co.* 1 B. & C. 630; *Rex* v. *Mosley*, 2 B. & C. 226; *Lyndon* v. *Standbridge*, 2 H. & N. 46; *Reg.* v. *Neath*, L. R. 6 Q. B. 707; *Reg.* v. *Cleworth*, 9 L. T. N. S. 682.

(*i*) The design of this part is to embrace cases not falling within the preceding part of the section, and, as it were, to widen the field of inquiry. The phrases, "any matter connected with the good government of the municipality," or "the conduct of any part of the public business thereof," are as general as can well be made. Tney are taken from Rev. Stat. c. 17, to which reference is made in the next note.

(*j*) Commissioners so appointed have the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such commissioners deem requisite to the investigation. Rev. Stat. c. 17, s. 1; and the commissioners have the same power to enforce the attendance of witnesses, and to compel them to give evidence as is vested in any court in civil cases. *Ib.* sec. 2. No party, in such an inquiry, can be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution. In this respect there is a marked difference between inquiries here authorized and election inquiries. See sec. 219.

sult of the inquiry and the evidence taken thereon. (*k*) 46 V. c. 18, s. 480.

Fees payable to County Judge.

(2) The Judge of the County Court, holding such investigation, shall be entitled to receive, and shall be paid by the municipality requesting him to hold the investigation, the same fees as he would be entitled to receive if the matter had been referred to him as a referee under the provisions of *The Judicature Act.* 49 V. c. 37, s. 11.

Rev. Stat. c. 44.

DIVISION XII.—WHEN MAYOR MAY CALL OUT *Posse Comitatus.*

Mayor may call out posse comitatus. Sec. 478.

Mayor may call out *posse comitatus.*

478. The mayor of any city or town may call out the *posse comitatus* (*l*) to enforce the law within his municipality should exigencies require it, but only under the same circumstances in which the sheriff of a county may now by law do so. 46 V. c. 18, s. 481.

Witnesses, it is apprehended, would not be entitled to compensation for loss of time. See note *a* to sec. 383.

(*k*) The Judge is required to report not only the *result* but the evidence. This intends that the evidence shall be reduced to writing.

(*l*) "*Posse Comitatus*," or power of the county, includes the aid of and attendance of every person above the age of fifteen within the county. Persons able to travel are required to be assistant in this service. It is used when a riot is committed, a possession kept on a forcible entry, or any force or rescue made contrary to the Queen's writ or in opposition to the execution of justice. The power is, usually summoned by the sheriff. But with respect to writs that issue in the first instance to arrest in civil suits, the sheriff is not bound to take the *posse* to assist him in the execution of them; though he may do so if he pleases, on forcible resistance to the execution of the process. Sheriffs, &c., are to be assisting Justices of the Peace in suppressing riots, &c., and raise the *posse* by charging any number of men to attend for that purpose, who may take with them such weapons as shall be necessary, and they may justify the beating and even killing such rioters as resist or refuse to surrender; and persons refusing to assist in the *posse* may be fined and imprisoned. It is lawful for a peace officer to assemble a competent number of people and sufficient power to suppress rebels, rioters, &c.; but there must be great caution, lest under a pretence of keeping the peace, the peace officer cause a breach of it; and sheriffs, &c., are punishable for using heedless violence or alarming the country in these cases without just ground. See Watson's Office of Sheriff, 2nd ed. 2, 73, 193. As to calling out the militia in aid of the civil power. See R. S. C. c. 41, s. 34.

PART VII.

POWERS OF MUNICIPAL COUNCILS.

TITLE I.—IN GENERAL.
TITLE II.—AS TO HIGHWAYS AND BRIDGES.
TITLE III.—AS TO WORKS PAID FOR BY LOCAL RATE.
TITLE IV.—AS TO RAILWAYS.

TITLE I.—POWERS IN GENERAL.

DIV. I.—OF COUNTIES, TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.
DIV. II.—OF TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.
DIV. III.—OF TOWNSHIPS, CITIES, AND TOWNS.
DIV. IV.—OF COUNTIES AND CITIES.
DIV. V.—OF COUNTIES, CITIES, AND SEPARATED TOWNS.
DIV. VI.—OF CITIES, TOWNS, AND INCORPORATED VILLAGES.
DIV. VII.—OF CITIES AND TOWNS.
DIV. VIII.—OF TOWNSHIPS, TOWNS, AND VILLAGES.
DIV. IX.—OF TOWNS AND INCORPORATED VILLAGES.
DIV. X.—OF COUNTIES ONLY.
DIV. XI.—OF TOWNSHIPS ONLY.

DIVISION I.—POWERS OF COUNCILS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.

Respecting the obtaining of property. *Sec.* 479 (1).
" *Appointment of certain officers.* *Sec.* 479 (2, 3).
" *Harbours, Docks, &c.* *Sec.* 479 (4-8).
" *Aid to Agricultural, &c., Societies.* *Sec.* 479 (9).
" " *Manufacturing Establishments.* *Sec.* 479 (10).
" " *Road Companies, &c.* *Sec.* 479 (11).
" " *Indigent persons and charities.* *Sec.* 479(12).
" *Census.* *Sec.* 479 (13).
" *Driving and Riding.* *Sec.* 479 (14).
" *Drainage.* *Sec.* 479 (15).
" *Mode of Egress from Buildings.* *Sec.* 479 (16).
" *Fines and Penalties.* *Sec.* 479 (17-19).
" *Ornamental Trees.* *Sec.* 479 (20).
" *Seizure of Bread of short weight.* *Sec.* 479 (21).
" *Acquisition of land for Parks, &c.* *Sec.* 479 (22, 23).

Respecting Contracts for supply of Gas and Water. Sec. 480.
" *Discovery of Crime.* Sec. 481.
Summary Remedy if By-laws not obeyed. Sec. 482.
Compensation for Lands taken. Secs. 484-488.
Powers in relation to Roads and Bridges. *See sec.* 550 *et seq.*

Councils may make by-laws.

479. The council of every county, township, city, town and incorporated village (*m*) may pass by-laws:—

Obtaining Property.

For obtaining property, real and personal, etc.

1. For obtaining such real and personal property as may be required for the use of the corporation, (*a*) and for erecting, improving and maintaining a hall, and any other houses and buildings required by and being upon the land

(*m*) The powers conferred by this section can only be exercised by By-law. See *Grand Junction R. W. Co.* v. *County of Hastings*, 25 Grant 40.

(*a*) The right of a municipal corporation to acquire property independently of statute is by no means free from doubt. See note *v* to sec. 230. But in order that there should be no doubt, express power is here conferred. It is not to be extended to the acquirement of land for speculation or profit. *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *Davison College* v. *Chambers' Executors*, 3 Jones, Eq. (N. C.) 253-258; *State Bank* v. *Brackenridge*, 7 Blackf. (Ind.) 395; *McCartee* v. *Orphan Society*, 9 Cow. (N. Y.) 437; *Chambers* v. *St. Louis*, 29 Mo. 543. But the acquirement of wet lands by townships with a view to their improvement and sale, is expressly authorized. See sec. 521, sub-s. 12. As to the right to acquire land outside of the municipality. See sec. 489, sub-s. 57. In the event of the corporation lending money on mortgage, if default be made in the payment of the mortgage money, the corporation is entitled to a decree of foreclosure, notwithstanding the Statutes of Mortmain, and is not restricted to a decree for sale of the land. *Orford* v. *Bailey*, 12 Grant 276; see further *Brown* v. *McNab*, 20 Grant 179; *Brussels* v. *Ronald*, 4 C. R. 1. And it would also seem that a municipal corporation may give time to a debtor and take a mortgage on real estate to secure its payment. See *Belleville* v. *Judd*, 16 U. C. C. P. 397; but see *Brown* v. *McNab*, 20 Grant 179. The laying out, upon a map of an intended town, of squares or other open spaces for public recreation or amusement, or for any other public purpose, renders them as sacred to such purpose as the streets themselves. *Per* Spragge, V. C., in *Guelph* v. *Canada Co.*, 4 Grant 654; see further *Wyoming* v. *Bell*, 24 Grant 564; and if an alienation to a different purpose, by a person pretending to have the right to alienate, be attempted, the Court would interfere by injunction to restrain it. *Ib.* So, if the municipal corporation itself be a trustee of land for a public purpose, and without authority attempt to alienate it, in breach of the trust for which it is held, the Court would restrain the alienation, or, if actually made, would order a reconveyance. *Attorney-General* v. *Goderich*, 5 Grant 402. See also notes to sub-s. 8 of sec 504.

of the corporation, (*b*) and for disposing of such property when no longer required. (*c*)

Appointing certain Officers.

May appoint certain officers

2. For appointing (*d*) such—

Pound-keepers,
Fence-viewers,
Overseers of Highways,
Road Surveyors,
Road Commissioners,
Valuators,
Game Inspectors,

(*b*) The power to erect a hall and other buildings required by the corporation does not, it is apprehended, include a saw-mill, erected with the avowed intention of benefiting the municipality. See *Kinloss* v. *Stauffer*, 15 U. C. Q. B. 414. A rule *nisi* for mandamus at the instance of the Justices of the Huron District, to compel the municipal council of the Huron District to build a court house was refused. *Justices of the Huron District* v. *Huron Council*, 5 U. C. Q. B. 574. A By-law passed by the municipal council of Prescott and Russell, to tax the county of Russell alone for the erection of a registry office for the use of the united counties, was set aside. *Smith* v. *Prescott and Russell*, 10 U. C. Q. B. 282. A by-law to raise money wherewith to build a town hall and market approved by the ratepayers did not specify any site on which the buildings were to be erected. Held, that this left the councillors unfettered in the choice of site, although at the time there was a resolution on the minutes of the council adopting a particular one, and which had been conveyed to the corporation for the purpose. *Little* v. *Wallaceburgh*, 23 Grant 540.

(*c*) This includes a town hall and the site on which it stands, when it is deemed that a new town hall in another situation would be more convenient for the public. *In re Hawke and Wellesley*, 13 U. C. Q. B. 636. The Court under special circumstances refused to quash a by-law for the erection of a town hall, the objection being that they had already by a previous by-law acquired a different site and contracted to build on it. *Forester and The Corporation of Ross*, 24 U. C. Q. B. 588. The Court has not the power of restraining the councillors of an incorporated village in the due exercise of their constitutional power from changing the site of a proposed town hall, and market although the first site has been acquired for the purpose it not being shewn that any change of circumstances had been made by parties on the faith of it, or that any corrupt or improper motive actuated the members of the council in making the change. *Little* v. *Wallaceburgh*, 23 Grant 540.

(*d*) It is not here said in what manner, that is whether under corporate seal or otherwise, the officers in this section named are to be appointed. The Municipal Bill of 1858, when introduced to the House of Assembly, had the words "under the corporate seal"; but these words were afterwards struck out in committee. It has always been a recognized qualification of the principle which requires the use of the seal, that there are certain small matters of such frequent

and other officers as are necessary in the affairs of the corporation, or for carrying into effect the provisions of any Act of the Legislature, or by-law of the corporation (*e*) or for the removal of such officers; (*f*) but nothing in this Act shall prevent any member of a corporation from acting as commissioner, superintendent or overseer, over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality; and it shall be lawful for the municipality to pay such member of the corporation acting

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occurrence in the course of conducting affairs by a corporation, that it appears to be of necessity that corporations should be allowed to transact them without going through the formality of a sealed instrument. The hiring of servants to perform their ordinary duties has from a very early period been one of these exceptions. *Raines* v. *Credit Harbour Co.*, 1 U. C. Q. B. 174. Whether the officers named in this section come within the exception is, at least, doubtful. The old law required such appointments to be under corporate seal, 12 Viet. c. 81, s. 31, sub-s. 5, and the intendment of this subsection, which must be taken in connection with the general words at the commencement of this section, appears to be that the appointment should be by by-law. See further note *c* to sec. 3.

(*e*) The power is not only to appoint the officers named, but "such *other* officers as are *necessary* in the affairs of the corporation, or for carrying into effect the provisions of any Act of the Legislature or the by-law of the corporation." There are those who contend that it is incident to the powers of a municipal corporation to appoint all officers necessary in the affairs of the corporation. *Vintners* v. *Passey*, 1 Burr. 235; *Hastings Case*, 1 Mod. 24; *Rex* v. *Barnard*, Comb. 416; *Hoboken* v. *Harrison*, 1 Vroom. (N.J.) 73; *White* v. *Tallman*, 2 Dutch. (N.J.) 67; *People* v. *Bedell*, 2 Hill (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233. But where an act makes provision for the appointment of principal officers named, and other necessary officers, the statute must so far as possible, be followed and no appointments be made in contravention of it or otherwise, than directed by it. *Rex* v. *Weymouth*, 7 Mod. 373; *Rex* v. *Bumstead*, 2 B. & Ad. 699; *Rex* v. *Spencer*, 3 Burr. 1827; *Rex* v. *Chitty*, 5 A. & E. 609; *Stadler* v. *Detroit*, 13 Mich. 346; *Vason* v. *Augusta*, 38 Geo. 542.

(*f*) Words authorizing the appointment of any public functionary include the power of removing him, reappointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested. Rev. Stat. cap. 1 s. 8, sub-s. 26. But the power of removal cannot, unless expressly delegated, be exercised by a portion merely of the corporation, but by the corporation as a corporate body acting duly and regularly. *Lord Bruce's Case*, 2 Str. 819; *Rex* v. *Lyme Regis*, (*Fane's Case*), Dong. 149; *Rex* v. *Richardson*, 1 Burr. 517; *Rex* v. *Doncaster*, Say. 38; *Rex* v. *Taylor*, 3 Salk. 231; *Rex* v. *Feversham*, 8 T. R. 356; *State* v. *Jersey City*, 1 Dutch (N. J.) 536; *Osgood* v. *Nelson*, L. R. 5, H. L. 636.

as such commissioner, superintendent or overseer; (*g*) 49 V. c. 45, s. 15; 50 V. c. 29, s. 18. *See* Rev. Stat. c. 210, s. 5.

3. For regulating the remuneration, fees, charges and duties of such officers, (*h*) and the securities to be given for the performance of such duties (*i*); *See* sec. 278. May fix fees and securities

Harbours, Docks, etc.

4. For regulating or preventing the encumbering, injuring, or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water; (*j*) Cleanliness of wharves, docks, etc.

5. For directing the removal of door steps, porches, railings or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, at the expense of the proprietor or occupant of the property connected with which such projections are found; (*k*) Removal of door steps, &c., obstructing wharves, &c.

(*g*) If it were not for some provision of this kind, the contract as it were, between the corporation and the member to act as a commissioner, &c., would be void. See sec. 431 and notes thereto.

(*h*) It is the duty of the council to provide for the payment of all municipal officers, whether the remuneration is settled by statute or by-bylaw of the council. See note *c* to sec. 278.

(*i*) See note *j* to sec. 249.

(*j*) All powers of municipal corporations over public wharves, docks, slips, &c., must be derived from the Legislature. *Snyder* v. *Rockport*, 6 (Ind.) Porter 237; *Carrollton Railroad Co.* v. *Winthrop*, 5 La. An. 36. The Legislature of Ontario has no power to make laws as to navigation and shipping. B. N. A. Act, sec. 91, sub. 10. According to the plain and ordinary meaning of this sub-section, "the regulating or preventing the encumbering, injuring or fouling by animals, vehicles, vessels or other means, of any public wharf," &c., cannot be held otherwise than matter of municipal concern. A by-law that any person encumbering, injuring or fouling any public wharf should be liable to a penalty named, and in default of payment or sufficient distress to imprisonment "for not less than ten nor more than thirty days" was held to be void. *In re McLeod and Kincardine*, 38 U. C. Q. B. 617. The power is restricted to public wharves, &c. Whether a wharf can be said to be public or private depends upon circumstances; such as the purpose for which it was built, the uses to which applied, the place in which located, and the character of the structure, &c. *Dutton* v. *Strong*, 1 Black, (U.S.) 23.

(*k*) See note *m* to s. 482.

Making, &c., of wharves, docks, &c.

6. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof; (*l*)

Regulating harbours, beacons, wharves, elevators, &c.

Vessels, &c.

Harbour dues.

7. For regulating harbours; for preventing the filling up or encumbering thereof; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers and docks therein, and also floating elevators, derricks, cranes and other machinery suitable for loading, discharging or repairing vessels; for regulating the vessels, crafts and rafts arriving in any harbour, (*m*) and for imposing and collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a harbour master; (*n*)

(*l*) The preceding sub-section relates to the regulation, for the good of the public, of public wharves, docks, slips, &c., but this does more; it enables the municipal corporation to make, open, preserve, alter, improve, and maintain public wharves, &c. The charter of a city authorized it to establish wharves and public landings, to fix the rate of wharfage, and to regulate the anchorage and mooring of all boats within the city. Held, that the city had the power to forbid a person owning a lot abutting on the river, and on which no wharf or public landing had been established, to use such lot as a wharf or landing without the permission of the city and the payment of wharfage. *Dubuque* v. *Stout*, 32 Iowa, 80; *S. C.* 7 Am. 171. When a municipal corporation are riparian owners they have, it is said, an implied authority to erect wharves, &c. See *Murphy* v. *City Council*, 11 Ala. 586; *Boston* v. *Lecraw*, 17 How. (U.S) 426; *Commonwealth* v. *Roxbury*, 9 Gray (Mass.) 514-519; *Baltimore* v. *White*, 2 Gill, (Md.) 444. A municipality which charges and receives wharfage assumes the obligation to provide safe wharves and to keep the wharf in repair. *Fannesmore* v. *New Orleans*, 2 Withrow, 371.

(*m*) The duties of those having control of a harbour is, so long as it is open to the public, to have it reasonably safe for the public use, and this whether tolls are collected or not for the use of it. *Parnaby* v. *Lancashire Canal Co.*, 11 A. & E. 223; *Metcalfe* v. *Hetherington*, 11 Ex. 257; 5 H. & N. 719; *Gibbs* v. *Liverpool Docks*, 3 H. & N. 164; L. R. I H. L. 93, 104, 122; *Longmore* v. *Great Western R. Co.*, 35 L. J. C. P. 135; *Francis* v. *Cockrell*, L. R. 5 Q. B. 184; *Webb* v. *Port Bruce Harbour Co.*, 19 U. C. Q. B. 626; *Coe* v. *Wise*, L. R. 1 Q. B. 711: *Winch* v. *Conservators of the Thames*, L. R. 7 C. P. 471; see also *Pittsburg* v. *Grier*, 22 Pa. St. 54; *Eastman* v. *Meredith*, 36 N. H. 284-295; *People* v. *Albany*, 11 Wend. (N.Y.) 539; *Buckbee* v. *Brown*, 21 Wend. (N.Y.) 110; see further, *Sweeney* v. *Port Burwell Harbour Co.*, 17 U. C. C. P. 574; reversed, 19 U. C. C. P. 376; *Berryman* v. *Port Burwell Harbour Co.*, 24 U. C. Q. B. 34; *Hood* v. *Commissioners of Harbour of Toronto*, 34 U. C. Q. B. 87, 37 U. C. Q. B. 72.

(*n*) The power is here conferred in its lowest form, viz., to impose

8. For granting aid by way of bonus, for or towards the construction of harbours, wharves, docks, slips, and necessary beacons on any river, lake or navigable water passing in, through, or forming any part of the boundary of a county whether such bonus be given by such county or by a city, town, township, or incorporated village situate therein and to pay such bonus either in one sum, or in annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions as the municipality may deem expedient; Granting aid by way of bonus to harbours, &c.

(*a*) No such by-law shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts; (*o*) Assent of electors necessary.

(*b*) Any municipality granting such aid may take and receive of and from such person or body corporate, receiving any such aid, security for the compliance with the terms and conditions upon which such aid is given. (*p*) Security may be taken.

Aiding Agricultural and other Societies.

9. For granting money or land (*q*) in aid of the Agricultural and Arts Association of Ontario, or of any duly organ- Granting aid to agricultural societies.

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and collect such *reasonable* harbour dues *as may serve to keep the harbour in good order, and to pay the harbour master.* See *In re Campbell and Kingston,* 14 U. C. C. P. 285. The power cannot be exercised for purposes of revenue. See *In re Hagaman and Owen Sound,* 20 U. C. Q. B. 583. If the wharf, &c., be the property of the city, it may be that the right to impose and collect tolls would be held to be a mere incident of the ownership of property. See note *l* to sub-s. 6 of this section. But the right to erect *public* wharves and to demand tolls for their use would appear to be a franchise requiring competent legislative authority. *People* v. *Broadway Wharf Co.*, 31 Cal. 33; *Wharf Case*, 3 Bland. Ch. (Md.) 383; *Wiswall* v. *Hall*, 3 Paige Ch. (N.Y.) 313; *Thompson* v. *New York*, 11 N. Y. 115. The power conferred is to impose the duty on the vessels, craft, rafts, &c. See *In re Bogart* v. *Belleville*, 6 U. C. C. P. 425, and not on the shippers, consignees, &c. *Re McLeod and Kincardine*, 38 U. C. Q. B. 617. But see *President, &c., of the Bronte Harbour Co.* v. *White*, 23 U. C C. P. 164.

(*o*) See sec. 344.

(*p*) See *Brussels* v. *Ronald*, 11 A. R. 605.

(*q*) Municipal corporations have no power to grant the money of he ratepayers for purposes other than those expressly authorized, or

ized agricultural or horticultural society in Ontario, or of any incorporated Mechanics' Institute or free library, established under *The Free Libraries Act*, within the municipality, or within any adjoining municipality. 46 V. c. 18, s. 482 (1-9); 50 V. c. 29, s. 19. *See also Rev. Stat.* c. 39, s. 81 (1).

Rev. Stat. c. 189.

Aiding Manufacturing Establishments.

Granting aid by way of bonus to manufactures.

10. For granting aid by way of bonus for the promotion of manufactures within its limits, by granting such sum or sums of money to such person or body corporate, and in respect of such branch of industry as the said municipality may determine upon; and to pay such sum, either in one sum or in annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions as the said municipality may deem expedient; (*r*)

Assent of electors necessary.

(*a*) No such by-law shall be passed until the assent of the electors has been obtained, in conformity with the

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for such purposes as are necessary to carry out powers expressly conferred upon them or existing by necessary intendment. To such an extent has this very proper limitation been carried in the United States, that the power of a corporation to grant money for the celebration of their national birthday, 4th July, has been denied. *Hodges* v. *Buffalo*, 2 Denio. (N. Y.) 110; see also *Tash* v. *Adams*, 10 Cush. (Mass.) 252; *Thomas* v. *Wilson* 20 U. C. Q. B. 331; *Samson* v. *Arthabasha*, 14 Q. L. R. 140. The land intended to be granted is land held otherwise than for corporate purposes, and so not clothed with a trust for the use of the the public. See note *a* to sub-section 1 of this section.

(*r*) A municipality has power under this sub-section to lend money for the encouragement of a manufacturing establishment, notwithstanding the use of the word "bonus," which does not necessarily import a gift. *Scottish-American Investment Co.* v. *Elora*, 6 A. R. 628. In the United States it has been held that the Legislature cannot constitutionally authorize a town to loan its credit to persons who will in consideration thereof maintain a manufacturing enterprise in the town for their own private emolument. *Allen* v. *Jay*, 11 Am. 185; *Brewer Brick Co.* v. *Brewer*, 16 Am. 395: see further, *Commercial National Bank* v. *City of Iola*, 2 Dillon C. C. 353; 20 Wall. 655; *Weismer* v. *Village of Douglass*, 64 N. Y. 91. But no such question has been raised in this Province. A municipal council, under sec. 366, has power to exempt manufacturing establishments from taxation. But apparently they cannot discriminate in favour of new manufactories as against old manufactories in the same line of business. See note *a* to sec. 366, and by 51 V. c. 28, s. 16 (320 (*a*)) of this Act) similar and other restrictions are imposed as to what manufactories may be aided. Where the majority of members of the council granting the bonus were also stockholders in the company proposed to be benefited the by-law was set aside. *Re Baird and Almonte*, 41 U. C. Q. B. 415. See now sub.-s. *b*. As to the

provisions of this Act in respect of by-laws for creating debts. (*s*) *See* sec. 320 and 320 (*a*)

Persons interested in company not to vote on by-law aiding same.

(*b*) No property owner or lessee interested in, or holding shares or stock in, any company shall be qualified to vote on a by-law for the purpose of granting a bonus to the company in which he is so interested as aforesaid.

Security may be taken

(*c*) Any municipality granting such aid, may take and receive security for the compliance with the terms and conditions upon which such aid is given. [*See section* 366 *as to exempting manufacturing establishments from taxation.*]

Aiding Road Companies, etc.

Aid for roads, bridges and harbours.

11. For taking stock in or lending money, or granting bonuses to any incorporated company, in respect of any road, bridge or harbour, within or near the municipality, under and subject to the respective statutes in that behalf, or for granting aid by way of bonus to any incorporated road or bridge company ; (*t*)

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right of a municipal corporation to take a mortgage to secure performance of the conditions on which a bonus has been granted. See *Brussels* v. *Ronald*, 4 O. R. 1 ; 11 A. R. 605.

(*s*) See sec. 344, *et seq.*

(*t*) A municipal council having jurisdiction within the locality through or along the boundary of which a road of a road company passes, *may subscribe for*, *hold*, *sell and transfer stock* in any company formed under the general Act (Rev. Stat. c. 159), or any former Act passed for the like purpose, and may from time to time direct the mayor, reeve, warden or other chief officer of the municipality, on behalf thereof, to subscribe for such stock in the name of the municipality, and to act for and on behalf of the municipality in all matters relative to such stock, and the exercise of the rights of the municipality as a shareholder ; and the mayor, reeve, warden or other chief officer shall, whether otherwise qualified or not, be deemed a shareholder in the company, and may vote and act as such, subject to any rules and orders in relation to his authority made in that behalf by the by-laws of the municipal council or otherwise, and may vote according to his discretion in cases not provided for by the municipality. *Ib.* sec. 68. The municipal council may pay all instalments upon the stock they subscribe for and acquire, out of any moneys belonging to the municipality, and which are not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the said stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to the municipality may lawfully be applied. *Ib.* sec. 69. So the municipal council of any locality

Assent of electors necessary.

(*a*) No such by-law granting such aid by way of bonus shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts. (*u*)

Aiding Indigent Persons and Charities.

Aiding indigent persons and charities.

12. For aiding in maintaining any indigent person belonging to or found in the municipality at any work-house, hospital or institution for the insane, deaf and dumb, blind or other public institution of a like character; or for granting aid to any charitable institution or out-of-door relief to the resident poor (*v*); *See sec.* 504 (11).

Census.

Local census

13. For taking a census of the inhabitants, or of the resident male freeholders and householders in the municipality; (*w*)

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through or along the boundary of which any such road passes, or within which any such work connected therewith is constructed, may out of any moneys belonging to the municipality, and not appropriated to any other purpose, *lend money* to the company authorized to make the road, &c., upon such terms and conditions as may be agreed on between the company and the municipality making the loan; and the municipality may recover the money so loaned, and appropriate the money so recovered to the purposes of the municipality. *Ib.* sec. 71. The municipal council may issue debentures for the payment of any loan negotiated by them with any such company, in the same manner, and subject to the same conditions, as required by law with regard to the issuing of other debentures. *Ib.* sec. 72.

(*u*) See sec. 344 *et seq.*

(*v*) The Legislature here, have enabled but not required municipal councils to pass by-laws for aiding in maintaining any indigent person belonging to or to be found in the municipality at a public institution, or for granting aid to any charitable institution or to the resident poor. In England the 43 Eliz. ch. 2, makes it the duty of Justices to provide for the relief of the poor. The words used in the English Act are, "shall and may tax, rate and assess," and it then provides for overseers of the poor, who have power to call for and administer the necessary funds. We have no such organization. It is not therefor competent for our Courts to proceed upon the case of any individual applicant, for it does not rest with the Courts to dictate to municipal councils what particular cases of distress call for public relief. *Per* Robinson, C. J., *In re McDougall and Lobo*, 21 U. C. Q. B. 82.

(*w*) The B. N. A. Act provides for a decennial census (sec. 8), and the Dominion Legislature has made provision for the taking of the

Driving or Riding on Roads and Bridges.

To regulate driving on roads and bridges.

14. For regulating the driving and riding of horses and other cattle on highways and public bridges, and for preventing racing, immoderate or dangerous driving or riding thereon; (*x*)

Drainage.

Opening or stopping up drains and water-courses, &c.

15. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers or water-courses, within the jurisdiction of the council, (*y*) and for entering upon, breaking up, taking or using any land in or adjacent to the municipality, in any way necessary or convenient for the said purposes, and for entering upon, taking, or using any land not adjacent to the municipality for the purpose of providing an outlet for any sewer, but subject always to the restrictions in this Act contained; (*z*) 46 V. c. 18, s. 482, (10-15); 51 V. c. 28, s. 20.

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decennial census. R. S. C. c. 58. But the municipal council may desire to have a census more frequently, or to check the census of the particular locality made by the Dominion authorities; in either of which events, power is here conferred for taking the requisite census. See also sec. 18.

(*x*) No person is allowed to race with or drive furiously any horse or other animal upon any highway. Rev. Stat. c. 195, sec. 5.

(*y*) It has been held under former statutes that a municipal council has no right to bring down water in any quantity upon the land of an individual, and leave the water to stagnate there, without showing that it could not otherwise have been got rid of, and without showing that it was not in the power of the council to lead the water away from the plaintiff's land after the council had conducted it there. See *Brown* v. *Sarnia*, 11 U. C. Q. B. 87; *Perdue and Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590. See further *Merryfield* v. *Worster*, 14 Am. 592; *Attorney-General* v. *Hackney Local Board*, L. R. 20 Eq. 626. A corporation has no greater right than an individual to collect the surface water from its lands and streets and discharge it upon the lands of another. *Attorney General* v. *Leeds*, L. R. 5 Chy. 583; *Noonan* v. *Albany*, 21 Alb. L. J. 774. As to the liability where a person is allowed to discharge foul matter into a drain which is under the control of a municipal corporation. See *Gray* v. *Dundas*, 11 O. R. 317.

(*z*) By section 483, it is provided that every council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the corporation in the exercise of any of its powers, or injuriously affected by the exercise of its powers, due compensation for any damages (including cost of fencing

Egress from Buildings.

Doors, &c., of public buildings.

16. For regulating the size and number of doors in churches, theatres, halls, or other buildings used for places of worship, public meetings or places of amusement, and the street gates leading thereto, and also the size and number of doors, halls, stairs, and other means of egress from all hospitals, schools, colleges, and other buildings of a like nature,(*v*) and also the structure of stairs and stair-railings in all such buildings ; and the strength of walls, beams, and joists and their supports, and for compelling the production of the plans of all such buildings for inspection, and for enforcing observance of such regulations. 50 V. c. 29, s. 20.

16. (*a*) For regulating the size and strength of walls, beams, joists, rafters, roofs, and their supports of all buildings to be erected or repaired within the municipality, and for compelling the production of the plans of all buildings for inspection, and for enforcing observance of such regulations. 51 V. c. 28, s. 21.

Fines and Penalties.

(See also secs. 420-423.*)*

Fines and penalties.

17. For inflicting reasonable fines and penalties (*w*) not

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when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work. It is clear, therefore, that no municipal corporation has a right to trespass upon the property of a private person, doing no unnecessary damage, unless they shew it was necessary and convenient for them for the purpose of the road, street, or other work. Besides, it should be shewn that there was a by-law authorizing the work. *St. George's Church* v. *County of Grey*, 21 U. C. Q. B. 265. Unless a by-law were shown, the corporation would be looked upon as trespassers ; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. (*Ib.*) See *Pratt* v. *Stratford*, 14 O. R. 260 ; *Ayers* v. *Town of Windsor*, *Ib.*, 682.

(*v*) See The Act to regulate the means of egress from Public Buildings. Rev. Stat. c. 210.

(*w*) The corporate powers are not only limited but must be reasonably exercised, and not only strictly within the limits of the charter but in perfect subordination to the constitution and general law of the land, and the rights dependent thereon, and that power if properly exercised, may be enforced by good and competent penalties. *Per* Dickinson, J., in *Waters* v. *Leech*, 3 Ark. 115 ; see further note *f* to sec. 286. It was at one time supposed that, under power to a cor-

exceeding $50 exclusive of costs, (*x*)

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poration to impose a reasonable fine not exceeding a certain amount, for violation of the provisions of a by-law, the corporation was bound to fix a certain sum in the by-law, and had no power to reserve a discretion as to the amount within the limits prescribed ; and *Wood* v. *Searl*, Bridgman Rep. 139, was cited as an authority for that position. But in a subsequent case, Parke, B., said, "The only case we have been able to find bearing on this question is, that cited in the argument for the plaintiff—*Wood* v. *Searl*—in which the penalty was such a sum as the master, wardens, &c., should assess, not exceeding 40s. ; but this case is no authority either way, for the by-law was held to be bad, and it might have been so held upon other objections, or upon this. In the absence of any other authority to the contrary, we do not see any objection to this mode of fixing the penalty. It is a certain penalty of £5, with a power of mitigation not below £2, and we do not think this unreasonable. *Piper* v. *Chappell*, 14 M. &.W. 624, 648. Again, assuming the right of the corporation to so fix a penalty, its power to delegate the discretionary power to a convicting justice was doubted ; *Peters* v. *President and Board of Police of London*, 2 U. C. Q. B. 543 ; *In re Fennell and Guelph*, 24 U. C. Q. B. 238-243. But now, whether the fine be fixed in the by-law or not, it is enacted that the convicting justice "shall award the whole or such part of the penalty or punishment imposed by the by-law, as he sees fit." Sec. 421. A by-law without fine or penalty would be in effect nugatory. *State* v. *Cleveland*, 3 Rh. Is. 117. So it has been held that corporotions have an implied power to enforce by-laws by the imposition of reasonable fines or penalties. *Fisher* v. *Harrisburgh*, 2 Grant (Pa. Cas.) 291 ; *Barter* v. *Commonwealth*, 3 Pa. (Pen. & W.) 253 ; *Zylstra* v. *Charleston*, 1 Bay. (S. C.) 382. The fine or penalty should be imposed on the person who violates the by-law, and not, if an unauthorized trader, on the person with whom he deals. *Cuddon Eastwick*, 1 Salk. 192 ; *Fazakerley* v. *Wiltshire*, 1 Stra. 469 ; Willc. on Corp. 155, pl. 369. What is reasonable within the limits prescribed, must depend on circumstances. *Mobile* v. *Yuille*, 3 Ala. 137. A penalty, although small, fixed on every stroke of the hammer which an unauthorized person uses in his trade of a goldsmith, would be unreasonable. Willc. on Corp. 154, pl. 368 ; see also *New York* v. *Ordrenan*. 12 Johns. (N. Y.) 122. The corporation cannot multiply one offence into many, and punish for each. See *Crepps* v. *Durden*, Cowp. 640 ; *Hart* v. *Mayor, &c.*, 9 Wend. (N.Y.) 571 ; *Stokes* v. *New York*, 14 Wend. (N.Y.) 87 ; *New York* v. *Ordrenan*, 12 Johns. (N.Y.) 122. But a by-law fixing one penalty for the first offence, and a larger one for the second, and a still larger one for every subsequent offence, does not appear to be bad. *Butchers' Co.* v. *Bullock*, 3 B. & P. 434. Where the penalty is fixed by a by-law, it cannot be changed by any authority inferior to that which fixed it. *Rex* v. *Ashwell*, 12 East. 29 ; *Scarnings* v. *Cryers*, 3 Leon. 7.

(*x*) The limitation is $50, exclusive of costs. This is the maximum. The corporation may fix a less but cannot fix a greater fine or penalty for infraction of a by-law. It cannot do indirectly that which it is not allowed to do directly. It cannot, by multiplying into many that which is in reality only one offence, and annexing a penalty to each,

For neglect of duty, or refusal to accept office.

(*a*) Upon any person for the non-performance of his duties who has been elected or appointed to any office in the corporation, (*y*) and who neglects or refuses to accept such office, unless good cause is shown therefor, or to take the declaration of office, and afterwards neglects the duties thereof; (*z*) and

Or breach of by-laws.

(*b*) For breach of any of the by-laws of the corporation; (*a*)

Collecting penalties and costs.

18. For collecting such penalties and costs by distress and sale of the goods and chattels of the offender; (*b*)

Imprisonment when allowed and time of.

19. For inflicting reasonable punishment, by imprisonment with or without hard labour, either in a lock-up house in some town or village in the township, or in the county gaol or house of correction, for any period not exceeding twenty-one days, for breach of any of the by-laws of the council, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied: (*c*) except for breach of any by-law in cities and of any by-law for the suppression of houses of ill-fame in any

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evade the statute. See preceding note. But where each transaction is really a distinct offence, and may be so declared, and the punishment for each is within the competence of the corporation, the fines would not be illegal though in the aggregate exceeding $50, exclusive of costs. *Heise* v. *Town Council*, 6 Rich. (S.C.) Law. 404; see also *Chicago* v. *Quimby*, 38 Ill. 274.

(*y*) Every qualified person duly elected or appointed to be a *mayor*, *alderman*, *reeve* or *deputy reeve*, *councillor*, *police trustee*, *assessor* or *collector*, who refuses to accept office, is subject to a penalty of not more than $80 nor less than $8. Sec. 277. This section must be taken to apply to officers other than those for which the Act has made express provision.

(*z*) As to what is "neglect," "refusal," or "good cause" for not accepting, see notes to sec. 277.

(*a*) See note *w* to this sub-section.

(*b*) The power to enforce the payment of fines by distress *and sale* is one that must be expressly conferred. *White* v. *Tallman*, 2 Dutch (N.J.) 67; *Bergen* v. *Clarkson*, 1 Halst. (N.J.) 352; see also *Clerk* v. *Tucket*, 3 Lev. 281; *Lee* v. *Wallis*, 1 Ken. Cas. 292; *Adley* v. *Reeves*, 2 M. & S. 60.

(*c*) There is no power conferred to provide in the first instance for imprisonment. The power is to impose the imprisonment in case of non-payment of the fine, and there being no distress found out of which the fine can be levied. See note *m* to sec. 422. It is not usual to provide that a municipal corporation shall have power to imprison in the first instance for non-payment of a fine. See *London* v. *Wood*, 12 Mod. 686; *Clark's Case*, 5 Co. 64; *Bab* v. *Clerk*, Moore, 411;

municipality, in which cases the imprisonment may be for any period not exceeding six months, with or without hard labour (*d*) in case of the non-payment of the costs and fines inflicted, (*e*) and there being no sufficient distress as aforesaid; 46 V. c. 18, s. 482 (18-20).

Ornamental Trees.

Regulations as to trees, shrubs, etc., in public places.

20. For causing any tree, shrub or sapling, growing or planted on any public place, square, highway, street, lane, alley or other communication under its control, to be removed, if and when such removal is deemed necessary for any purpose of public improvement; but no such tree, shrub or sapling shall be so removed until after one month's notice thereof is given to the owner of the adjoining property, and he is recompensed for his trouble in planting and protecting the same; nor shall such owner, or any path-master or other public officer, or any other person, remove or cut down or injure such tree, shrub or sapling, on pretence of improving the public place, square, highway, street, road, lane, alley, or other communication or otherwise, without the express permission of the municipal council having the control of the public place, square, highway, street, road, lane, alley, or other communication; and any council may expend money in planting and preserving shade and ornamental trees upon any public place, square, highway, street, road, lane, alley, or other communication within the municipality, and may grant sums of money to any person or

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Rex. v. *Merchant Taylor's Co.*, 2 Lev. 200; *Chilton* v. *Railway Co.*, 16 M. & W. 212; *Barter* v. *Commonwealth*, 3 Pa. (Pen. & W.) 253; *New Orleans* v. *Costello*, 14 La. An. 37; *Burlington* v. *Kellar*, 18 Iowa, 59; *Brieswick* v. *Mayor, &c., of Brunswick*, 21 Am. 240.

(*d*) The ordinary limit of imprisonment in default of payment of fine, or distress for same, is twenty-one days. *In re McLeod and Kincardine* 38, U. C. Q. B. 617. But in all city by-laws, and in by-laws of any municipality for the suppression of houses of ill-fame, the term of imprisonment may be extended to a period not exceeding six months. A conviction under Con. Stat. Can. cap. 105, for keeping a house of ill-fame or being an inmate of such a house, adjudicating that the accused should pay a fine of $50 forthwith and be imprisoned for three months unless the fine be sooner paid, was held to be illegal. *In re Slater and Wells*, 9 U. C. L. J. 21; *Reg.* v. *Munro*, 24 U. C. Q. B. 44; see further, *Reg.* v. *Rice*, L. R. 1 C. C. 21.

(*e*) The amount of the fine in no case must exceed $50 exclusive of costs. See sub-sec. 17 of this section.

association of persons to be expended for the same purposes; (*f*) 46 V. c. 18, s. 482 (22).

Seizing Bread, etc.

Light weight and short measure.

21. For seizing and forfeiting bread or other articles when of light weight or short measurement. (*g*). 46 V. c. 18, s. 482, (24). *See also secs.* 489, (52); 503, (9).

(*f*) In 1871 the Legislature of Ontario for the first time enabled a municipal council to expend money in the planting and preserving of shade and ornamental trees upon the highways within the municipality, 34 Vic. c. 31, s. 5, and to grant sums of money to any persons, or association of persons, to be expended for such a purpose *Ib.* The latter part of this section is a re-enactment of the last mentioned provisions. Besides municipal councils are empowered to allow to any person who shall plant any fruit trees or any trees shrubs or saplings suitable for affording shade, on any highway within the municipality, in abatement of statute labour or out of the general funds, a sum of not less than twenty-five cents for every tree so planted. Sec. 489, sub-s. 27. See also Rev. Stat. c. 201.

(*g*) The assize of bread has from the earliest times been deemed necessary. See Burn's Justice, Title "Bread." The apparent meaning of the assize of bread, seems to be the power or privilege of assizing or adjusting the weight or measure of bread. *Re Nasmith*, 2 O. R. 192. Power to regulate the assize of bread is given by sec. 503, sub-s. 12. The power to seize, as forfeited, bread or other property for light weight or short measurement, is one that cannot be inferred from a mere power to regulate. Power "to regulate everything which relates to bakers," was held to give authority to provide for a for a forfeiture of bread baked contrary to the provisions of a by-law. *Mobile* v. *Yuille*, 3 Ala. 137. So a by-law providing a forfeiture for the use of the city workhouse of bread so baked, was held legal. *Guillotte* v. *New Orleans*, 12 La. An. 432; *Page* v. *Fazakerly*, 36 Barb. (N. Y.) 392. The sale of bread is now in England regulated by 6 & 7 Will. IV. ch. 37. In it there was an exception of bread which, when the Act was passed, was known under the denomination of French or fancy bread. When this fancy bread became afterwards bread in ordinary and common use, and was so sold, it was held that the exception had ceased. *Reg.* v. *Wood*, L. R. 4 Q. B. 559. "The object of the Legislature in passing the Act, was to liberate the trade from the restrictions of the Assize Act, and leave the baker at liberty to make bread of any size and shape he pleased, and to charge his own price for it; but in order to protect the customer from imposition, it required the baker to sell by weight. He is no longer at liberty to sell at so much a loaf: he must sell at so much per pound, and the customer is to be supplied with so many pounds of bread, unless he chooses to have an article of an exceptional quality—something that is not ordinary bread; and if he buy that, the baker is at liberty to sell it without reference to weight. But unless it is of an exceptional character, if it is the common article of consumption, the baker must sell it as such. It is obvious that if what is now ordinary bread is to be treated as exceptional and an

Acquiring Lands for Parks, etc.

Acquiring lands for parks, etc.

22. For entering upon, taking and using and acquiring so much real property as may be required for the use of the corporation, for public parks, squares, boulevards, and drives in the municipality and adjoining local municipalities without the consent of the owners of such real property, making due compensation therefor to the parties entitled thereto, (*h*) to be determined under the provisions of this Act, by arbitration, where the parties do not agree ; (*i*)

Provisions where land expropriated is in an adjoining municipality.

23. In every case in which any municipality shall expropriate lands in an adjoining municipality, the municipality so expropriating such lands, shall put the same in an efficient state to be used as, and open the same to the general public, for the purposes of such public parks, squares, boulevards, and drives, within a reasonable time after such expropriation, and shall maintain and keep the same in an efficient state of repair ; and shall provide and maintain such police protection for such public parks, squares, and drives as shall be necessary for the safety of the public frequenting and using the same, and the residents whose lands adjoin the lands so expropriated. (*j*) 50 V. c. 29, s. 21.

GAS AND WATER.

Council may contract

480.—(1) Every municipal council shall have power to

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article of luxury, because it was so at the date of the Act, the enactment will become a dead letter." *Per* Lush, J., *Ib.*, 562. In another case, under the same Act, Cockburn, C. J., said, "We think, when a customer asks for bread by weight, that clearly is a case in which, whether the baker chooses to give him ordinary bread or fancy bread, the baker is bound to sell by weight. We by no means say the baker was bound to weigh in the presence of the customer, but he was bound to weigh the bread at some time or other before he sold it, and to sell it by weight instead of by the denomination of household bread, fancy bread, or any other denomination." *Reg.* v. *Kennett*, L. R. 4 Q. B. 565-567 ; see further, *Aerated Bread Co.* v. *Gregg*, L. R. 8 Q. B. 355. The power to seize, forfeit or destroy the property of another is an extreme power, and only to be exercised when expressly conferred. *Donovan* v. *Vicksburg*, 29 Miss. (7 Cush.) 247 ; *Miles* v. *Chamberlain*, 17 Wis. 446 ; *Cincinnati* v. *Buckingham*, 10 Ohio 257 ; *Rosebaugh* v. *Saffin*, *Ib.* 32 ; *Phillips* v. *Allen*, 41 Pa. St. 481 ; *Mobile* v. *Yuille*, 3 Ala. 137.

(*h*) See also *The Public Parks Act*, Rev. Stat. c. 190.

(*i*) See sec. 385, *et seq.*

(*j*) As to the power to acquire land outside of the municipality, See sec. 489, sub-s. 57.

with company for supply of water.

contract with any water-works or water company for a supply of water within the municipality for fire purposes and other public uses, from hydrants or otherwise as may be deemed advisable, and for the renting of such hydrants for any number of years not, in the first instance, exceeding ten, and for renewing such contract from time to time for such period, not exceeding ten years, as the council may desire, and every council shall also have power to purchase hydrants necessary for any of the purposes or uses aforesaid, and also to erect the same; and to purchase or rent for a term of years or otherwise, fire apparatus of any kind, and fire appliances and appurtenances belonging thereto respectively. 46 V. c. 18, s. 483.

Powers in respect of lighting and construction of gas works.

Rev. Stat. c. 164.

(2) Subject to the provisions of this Act, or any special Act, so far as the same may be applicable, the powers of a municipal corporation for lighting the municipality, or for constructing gas works, whether by this or by any special Act, shall include the powers conferred on gas companies by sections 54 and 55 of *The Act respecting Joint Stock Companies for supplying cities, towns, and villages with gas and water.* 42 V. c. 23, s. 3.

Municipal corporation constructing works to supply with gas or water buildings on line of supply, on request.

(3) Where any municipal corporation has constructed any gas or water works for supplying the municipality with gas or water, (*k*) and where there is a sufficient supply thereof, it shall be the duty of the corporation to supply with gas or water all buildings within the municipality, situate upon land lying along the line of any supply pipe of the said corporation, upon the same being requested by the owner, occupant, or other person in charge of such building.

Corporation may require security from consumer.

(4) The corporation before supplying gas or water to any building, or as a condition to its continuing to supply the same, may require any consumer to give reasonable security for the payment of the proper charges of the company therefor, or for carrying the gas or water into such building.

Liability for failure of supply not affected.

(5) Nothing in the preceeding two sub-sections contained shall be construed in any way to affect the liability of any corporation in respect of damages on account of any failure of supply through mischance, accident, or mismanagement, but the position of the corporation in respect thereto, shall remain as if such two sub-sections had not been enacted. 47 V. c. 26, ss. 1, 3, 4.

(*k*) See Rev. Stat. cc. 191 and 192.

DISCOVERY OF CRIMES.

481. The council of any municipality in which a flagrant crime is believed to have been committed, may offer and pay a reward for the discovery, apprehension, or conviction of the criminal, or of any person who is suspected to be the criminal. (*l*) 46 V. c. 18, s. 484. Rewards for apprehension of criminals.

SUMMARY REMEDY IF BY-LAW NOT OBEYED.

482. Whenever any municipal council has any authority to direct, by by-law or otherwise, that any matter or thing should be done by any person or corporation, such council may also, by the same or another by-law, direct that in default of its being done by the person, such matter or thing shall be done at the expense of the person in default, and may recover the expense thereof with costs by action or distress; (*m*) and, in case of non-payment thereof, the same shall be recovered in like manner as municipal taxes. (*n*) 46 V. c. 18, s. 485. Mode of compelling performance of matters directed to be done by council, etc.

COMPENSATION FOR LANDS TAKEN OR INJURED.

483. Every council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, Owners of lands taken by corpora-

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(*l*) As to the necessity for this enactment, see note to sec. 494.

(*m*) The usual penalty for non-compliance with a by-law is a fine. See sec. 479, sub. s. 17. Power to enforce the provisions of a by-law otherwise than by fine must be expressly given. See notes to sub-s. 17, of sec. 479. But where the object of the by-law is really that somebody should do the thing required, power to permit the thing to be done at the expense of the party in default is a reasonable one, and is here expressly given. In the case of by-laws for the removal of snow such a power has for a long time existed. See sec. 496, sub. s. 25. The power is now extended to all cases wherever a municipal corporation has authority, by by-law *or otherwise*, to direct that "*any* matter or thing" should be done by "*any* person or corporation." Suffering a party wall of less than the requisite thickness to remain, is not *per se* "a continuing offence." The more appropriate remedy is the removal of the structure at the expense of the owner, where the by-law permits of such a course being adopted. See *Marshall* v. *Smith*, L. R. 8 C. P. 416.

(*n*) Municipal rates may be recovered either by action or distress. But in either case there is a roll shewing the person rated and for how much he is rated. This is, as it were, the judgment against him for the amount. No provision is here expressly made for the placing of the name of the person in default on the roll. Whether such power is intended remains to be decided.

tion, etc., to be compensated.

taken or used by the corporation in the exercise of any of its powers, (*a*) or injuriously affected by the exercise of its powers,

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(*a*) An interference with the enjoyment of property belonging to another, *prima facie* gives a right of action. This being so, the right to maintain the action exists, unless shewn to have been taken away by Act of Parliament. The burden of shewing that it has been taken away rests upon those who interfere with the enjoyment of the property of others. See *Clowes* v. *Staffordshire Potteries Water Works Co.*, L. R. 8 Chy. 125. But social duties and obligations are paramount to individual rights and interests. In all civilized countries there is what is called the power of eminent domain. By this is meant the right of the public to appropriate private property for public uses. See *Divisional Council of the Cape Division and De Villiers*, 2 App. Cas. 567. This right is generally subject to the limitation that private property shall not be taken for public use without due compensation. See *Wells* v. *London, Tilbury and Southend R. W. Co.*, 5 Ch. D. 130. This limitation is contained in almost every State constitution in the United States. See *South-Western R. W. Co.* v. *Southern and Atlantic Telegraph Co.* 12 Am. 585; *Witham* v. *Osburn*, 18 Am. 287: *Osborn* v. *Hart*, 1 Am. 161; *Wild* v. *Deig*, 13 Am. 399; It is also one of the generally understood limitations in the unwritten constitution of Great Britain. "It is said this is for the general benefit of the inhabitants, &c., and it is only opposed by a few interested individuals. The usual answer to this kind of argument is, that if it is for the general benefit of the inhabitants to take from a few interested individuals their property, let the public pay the interested individuals for that of which they deprive them." *Per* Richards, C. J., in *Burritt and Marlborough*, 29 U. C. Q. B. 119-131; see further, *In re Albany Street*, 11 Wend. (N. Y.) 148; *Embury* v. *Connor*, 3 Comst. (N. Y.) 511; *In re Webster and West Flamborough*, 35 U. C. Q. B. 590. As to the circumstances to be taken into account in determining the value of property condemned for public purposes. See *Boom Co.* v. *Patterson*, 98 U. S. 403. The Legislature may, under proper restrictions, delegate this power of eminent domain for particular purposes to municipal and other corporations essentially public in their nature and ends. *People* v. *Smith*, 21 N. Y. 595; *Willson* v. *Blackbird Creek Marsh Co.*, 2 Pet. (U. S.) 251; *West River Bridge Co.* v. *Dix*, 6 How. (U. S.) 507; *Bloodgood* v. *Railroad Co.*, 18 Wend. (N. Y.) 9; *Mercer* v. *Railroad Co.*, 36 Pa. St. 99; *Commonwealth* v. *Charlestown*, 1 Pick. (Mass.) 180; *Scudder* v. *Trenton, &c., Falls Co.*, Saxt. (N. J.) 694; *Shaffner* v. *St. Louis*, 31 Mo. 264; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Swan* v. *Williams*, 2 Mich. 427; *Embury* v. *Connor*, 3 Comst. (N. Y.) 511. The purposes for which private property is to be appropriated should be specified in the Act delegating the power. *In re Claiborne*, 4 La. An. 7; *In re Exchange Alley*, 4 La. An. 4, *East St. Louis* v. *St. John*, 47 Ill. 463; *Kane* v. *Baltimore*, 15 Md. 240. Such an Act, as being an interference with the rights of property, must be strictly construed. *Dennis* v. *Hughes*, 8 U. C. Q. B. 444. Doubts with respect to what lands are authorized to be taken are generally given in favour of the landowner. *Webb* v. *Manchester and Leeds R. W. Co.*, 4 M. & Cr. 116; *Simpson* v. *South Staffordshire Water Works Co.*, 11 L. T. N. S. 411, 12 L. T. N. S. 360: *St. Louis* v. *St. John*, 2 Withrow 169; *S. C.* 42, Ill. 9; *Wild* v. *Deig*,

due compensation for any damages (including cost of fencing when required) (*b*) necessarily resulting from the

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13 Am. 399. If there be no doubt as to the land authorized, &c., the conditions precedent should be strictly pursued. *Dyckman* v. *New York*, 1 Seld. (N. Y.) 439; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Cincinnati* v. *Combs*, 16 Ohio 181 (1847); *Nichols* v. *Bridgeport*, 23 Conn. 189; *Judson* v. *Bridgeport*, 25 Conn. 426; *Van Wickle* v. *Railroad Co.*, 2 Green (N. J.) 162; *Adams* v. *Railroad Co.*, 10 N. Y. 328; *People* v. *Brighton*, 20 Mich. 57; *Bennett* v. *Buffalo*, 17 N. Y. 383; *Hunt* v. *Utica*, 18 N. Y. 442. Notice of some kind should be given to the party whose property is to be appropriated. *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Darlington* v. *Commonwealth*, 41 Pa. St. 68; *Nichols* v. *Bridgeport*, 23 Conn. 189; *Cruger* v. *Railroad Co.*, 12 N. Y. 190; *Myrich* v. *LaCrosse*, 17 Wis. 442; *Rathbun* v. *Acker*, 18 Barb. (N. Y.) 393; *Risley* v. *St. Louis*, 34 Mo. 404; *Welker* v. *Potter*, 18 Ohio St. 85; *Stewart* v. *Board of Police*, 25 Miss. 479; *Palmyra* v. *Morton*, 25 Mo. 593; *Swan* v. *Williams*, 2 Mich. 427. In the absence of statutory provision to the contrary, the corporation appropriating the property must pay the compensation and expenses connected therewith. *Morris* v. *Chicago*, 11 Ill. 650; *Trustees of Illinois and Michigan Canal* v. *Chicago*, 12 Ill., 403; see also *Dennis* v. *Hughes*, 8 U. C. Q. B. 444; *Lafferty* v. *Stock*, 3 U. C. C. P. 1. But a provision directing the expenses to be paid by some persons specially interested in the proposed work, is not illegal. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. It is now clearly established in England that an Act which authorizes the doing of works makes their execution lawful, and so takes away the right of action, which would have arisen but for such legislation. *Governor &c., of British Cast Plate Manufacturers* v. *Meredith*, 4 T. R. 794; *Dungey* v. *Mayor, &c., of London*, 38 L. J. C. P. 298; *Cracknell* v. *Mayor of Thetford*, L. R. 4 C. P. 629; *Dunn* v. *Birmingham Canal Co.*, L. R. 7 Q. B. 244; L. R. 8 Q. B. 42; *Geddis* v. *Bann Reservoir Co.*, Ir. L. R. 11 C. L. 160. But see *S. C.*, 3 App. Cas. 430, reversing judgment below. And it is a well understood rule in England, although the action is taken away, compensation is only recoverable when provided for by the statutes and in the manner prescribed by them. *Mayor of Montreal* v. *Drummond*, 1 App. Cas. 410.

(*b*) Whether damage can be recovered under the words "injuriously affected" depends upon whether the damage might have been the subject of an action if the works which caused it had been done without the authority of Parliament. This was the rule adopted in *Caledonia Railroad Co.* v. *Ogilvy*, 2 Macq. Sc. Ap. Ca. 229; followed in *Re Penny*, 7 E. & B. 660, generally adhered to since notwithstanding some adverse decisions; *Beckett* v. *Midland R. Co.*, L. R. 3 C. P. 82; *Reg.* v. *St. Luke's*, L. R. 7 Q. B. 148; *Bigg* v. *London*, L. R. 15 Eq. 376; and now approved by the House of Lords, *Ricket* v. *Metropolitan R. Co.*, L. R. 2 H. L. 175; see further: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418: *McCarthy* v. *Metropolitan Board of Works*, L. R. 7 C. P. 508; L. R. 8 C. P. 191; L. R. 7 H. L. 243; *Mayor, &c., of Montreal* v. *Drummond*, 1 App. Cas. 384. Reference may also be made to *Eaton*

Differences to be determined by arbitration.

exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; (*c*) and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act. (*d*) 46 V. c. 18, s. 486. *See sec.* 385 *et seq.*

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v. *Boston, Concord and Montreal Railroad*, 12 Am. 147; *Pumpelly* v. *Green Bay Co.*, 13 Wall. 168; *Stafford* v. *Providence*, 14 Am. 710; *Drewer* v. *Western Railroad, Ib.* 726. *In re Collins and Water Commissioners, Ottawa*, 42 U. C. Q. B. 378.

(*c*) The question is, what damage will the owner sustain by reason of his property being entered upon, taken or used, (according to the fact) by the corporation? If *all* his property be taken by contemplated work, he should receive pay for the value of his land. *In re Furman Street*, 17 Wend. (N.Y.) 650; *William and Anthony Streets*, 19 Wend. (N.Y.) 678. If *part* only be taken the question arises, how much the remaining part will be benefited by the contemplated work, and that, whatever it may be, ought to be deducted from the value of the part taken. *In re Canada Southern R. Co. and Nowall*, 41 U. C. Q. B. 195; *Meacham* v. *Railroad Co.*, 4 Cush. (Mass.) 291; *Dickenson* v. *Fitchburg*, 13 Gray (Mass.) 546; *Upton* v. *Railroad Co.*, 8 Cush. (Mass.) 600; *Farewell* v. *Cambridge*, 11 Gray (Mass.) 413; *Robins* v. *Railroad Co.*, 6 Wis. 636; *Dwight* v. *County Commissioners of Hampden*, 11 Cush. (Mass.) 201; *Howard* v. *Providence* 6 Rh. Is. 541. It is competent for arbitrators to find that no damage has been sustained. See *In re Colquhoun and Berlin*, 44 U. C. Q. B. 631. "The compensation under the statute, is for damages resulting from the taking of the land: the award, therefore, must be taken to be for so much as the property of the claimant was thereby reduced in value." *Per* Spragge, C., in *Dunlop* v. *York*, 16 Grant 216-223. This raises the question as to the title of the claimant. It is not to be assumed that the person in possession is the absolute owner of the land. He may not have any title, an imperfect title, or a title subject to encumbrances. Unless a charge on the land were made a charge upon the compensation, the security would be impaired at the expense of the chargee. The money becomes as it were impressed with the trusts to which the land was subject, and stands in its place. *Dunlop* v. *York*, 16 Grant, 216; *In re East Lincolnshire R. Act*, 1 Sim. N. S. 260; *Greaves* v. *Newfoundland Co.*, 23 L. T. 53; *In re Cuckfield Burying Board*, 19 Beav. 153; *Lippincott* v. *Smyth*, 2 L. T. N. S. 79; *Hall* v. *London, Chatham and Dover, R. W. Co.*, 14 L. T. N. S. 351; *Cooper* v. *Gostling*, 9 L. T. N. S. 77. Where a municipality raises the highway in such a manner as to cut off ingress and egress to and from the property abutting thereon the owners of such property are entitled to compensation for the injury caused thereby. *Yeomans* v. *Wellington*, 4 A. R. 301, where the cases are reviewed. See also *Pratt* v. *Stratford*, 14 O. R. 260; *Corporation of Parkdale* v. *West*, 12 App. Cas. 602; *Quillinan* v. *Canada Southern R. W. Co.*, 6 O. R. 567. Under this enactment the municipality may enter upon the land before making compensation. *Harding* v. *Cardiff*, 29 Grant 308; 2 O. R. 329.

(*d*) The claim for damages in an action of trespass, assumes that

the acts in respect of which they are claimed are unlawful, while the claim for compensation supposes that the acts are rightfully done under statutory authority; and this distinction is one of substance, for it affects not only the nature of the proceedings, but the tribunal in which recourse should be had. *Jones* v. *Stanstead, &c., R. W. Co.*, L. R. 4 P. C. 98; *Mayor, &c., of Montreal* v. *Drummond*, 1 App. Cas. 413. Where the statute gives a specific remedy to the owner, and the land is taken possession of under the provisions of the statute or with the consent of the owner, the latter is restricted to the method given by the statute for securing compensation. *Cotton* v. *Hamilton and Toronto R. W. Co.*, 14 U. C. Q. B. 87; *Rankin* v. *Great Western R. W. Co.*, 4 U. C. C. P. 463; *Grimshawe* v. *Grand Trunk R. W. Co.*, 19 U. C. Q. B. 493; *Welland* v. *Buffalo & Lake Huron R. W. Co.*, 30 U. C. Q. B. 147; 31 U. C. Q. B. 539; *Jones* v. *Stanstead, &c., R. W. Co.*, L. R. 4 P. C. 98, 120; *McLean* v. *Great Western R. W. Co.*, 33 U. C. Q. B. 198. If the land be taken without the consent of the owner, otherwise than according to the statute, it would seem that the owner may maintain trespass or ejectment for the assertion of his rights at common law. *Doe d. Hutchinson* v. *Manchester, &c., R. W. Co.*, 14 M. & W., 687; *Smalley* v. *Blackburn R. W. Co.*, 2 H. & N. 158; see also *Floyd* v. *Turner*, 23 Texas, 293; *Cushman* v. *Smith*, 34 Maine, 247; *Sower* v. *Philadelphia*, 35 Pa. St. 231. Where the land is taken as the statute prescribes, due compensation is to be made, and the amount, if not mutually agreed upon, is under this section to be determined by arbitration. Where work was done in such a way as to occasion damage to the plaintiff, whereas it could and should have been done without such effect, it was held that the plaintiff must prosecute his right by action and that the matter was not the subject of compensation under the arbitration clauses. *In re Mickle and Walkerton*, 11 O. R. 433. See also *McGarvey* v. *Strathroy*, 6 O. R. 138; 10 A. R. 631; *McArthur* v. *Collingwood*, 9 O. R. 368; *Van Egmond* v. *Seaforth*, 6 O. R. 599; *Smith* v. *Raleigh*, 3 O. R. 405. See further *Malott* v. *Township of Mersea*, 9 O. R. 611; *Adams* v. *Toronto*, 12 O. R. 243; *Pratt* v. *Stratford*, 14 O. R. 260; *Ayers* v. *Windsor*, *Ib.* 682. The Court set aside an award against a municipal corporation as to damages in favour of a person through whose land a road had been opened, where it appeared that no notice had been given to the municipal corporation of the meeting of the arbitrators. *In re Johnson and Gloucester*, 12 U. C. Q. B. 135. A municipal council by by-law opened a road across plaintiff's property, and arbitrators were appointed, one by the council, one by the plaintiff, and the third by the Judge of the County Court, to determine what compensation should be paid him. Afterwards a resolution was passed by the council that the arbitrators so chosen should be instructed to take into consideration the damage to the plaintiff's crops, so that all differences might be settled and they awarded separate sums for the opening of the road and for damages:—Held, in an action of debt on the award, that the corporation could not, under the plea of no award, dispute the arbitrators' authority to award the latter sum. *Hodgson* v. *Whitby*, 17 U. C. Q. B. 230. Where in a similar action it appeared that plaintiff named one arbitrator and the reeve another, and they being unable to agree on the third, the County Judge

How title acquired to land when owned by corporations, tenants in tail, vested in trustees, etc.

484—(1) In the case of real property which a council has authority under this Act to enter upon, take or use, without the owner's consent, (*e*) corporations, tenants in tail or for life, guardians, committees and trustees, shall, on behalf of themselves, their successors and heirs respectively, and on behalf of those they represent, whether infants, issue unborn, lunatics, idiots, married women or others, have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the council any such real property, or in agreeing as to the amount of damages arising from the exercise by the council of any power in respect thereof. (*f*)

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appointed the third, and the first and third mentioned arbitrators made an award in favour of plaintiff for £40 for compensation for land taken for a road, it was held that plaintiff was entitled to recover. *Harpel* v. *Portland*, 17 U. C. Q. B. 455. Afterwards the council called another meeting of the arbitrators, when all three attended, and the two first mentioned arbitrators made an award giving plaintiff only £3 10s. It was held that the second award was invalid. *Ib.* As to claims for compensation in cities when the amount claimed does not exceed $1,000. See sec. 487. As to tender of compensation. See sec. 488.

(*e*) See note *a* to sec. 483.

(*f*) The object of this section is to enable the corporation to get a good title to the land required, and to get that title if necesary from persons not having themselves the complete title. It has been held, under a similar Act, that a tenant in tail, under an Act of Parliament, might sell and convey so as to bar his heirs in tail and the remaindermen, notwithstanding his statutory disability to bar the entail. *In re Cuckfield Burial Board*, 19 Beav. 153. So where land stood limited to one life, with remainder to a husband and wife in fee, it was held that the interest of the married woman would pass. *Cooper* v. *Gostling*, 9 L. T. N. S. 77. Where the contract was made with a person of unsound mind—not, however, found so by inquisition—the money paid was held to be paid in respect of land belonging to a person seised in fee and competent to sell. *In re East Lincolnshire R. W. Co.*, 1 Sim. N. S. 260; but see *Midland R. W. Co.* v. *Oswin*, 1 Col. C. C. 74; 3 R. & C. C. 497. Where the land was in mortgage, and the mortgagor of unsound mind, the Court, in the absence of a committee, appointed a guardian *ad litem* to appear for the lunatic. *Greaves* v. *Great Northern R. W. Co.*, 23 L. T. 53; see also *Lippincott* v. *Smyth*, 2 L. T. N. S. 79; 8 W. R. 336; *Hall* v. *London, Chatham, and Dover R. W. Co.*, 14 L. T. N. S. 351; *Slipper* v. *Tottenham and Hampstead J. R. W. Co.*, L. R. 4 Eq. 112; *Governors of St. Thomas's Hospital* v. *Charing Cross R. W. Co.*, 1 J. & H. 400; *In re Taylor*, 1 McN. & G. 210; *In re Briscoe*, 2 DeG. J. & S. 249; *In re Walker*, 7 R. & C. C. 129. It has been held that a father who was a tenant for life of a settled estate could, as guardian by nature of his infant son who was entitled to the inheritance in

If there be no party who can convey, etc.

(2) In case there is no such person who can so act in respect to such real property, or in case any person interested in respect to any such real property is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the county in which such property is situate may, on the application of the council, appoint a person to act in respect to the same for all or any of the said purposes. (*g*) 46 V. c. 18, s. 487.

Application, etc., of purchase money where party has not an absolute estate in the property.

485. In case any person acting as aforesaid has not the absolute estate in the property, (*h*) the council shall pay to him the interest only at six per centum per annum on the amount to be paid in respect of such property and shall retain the principal to be paid to the person entitled to it whenever he claims the same, and executes a valid acquittance therefor, unless the High Court, or other Court having jurisdiction in such cases, in the meantime directs the council to pay the same to any person or into Court; (*i*) and the coun-

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remainder, concur on the son's behalf in a grant by himself of part of the settled estate as a site for a Church under Eng. Stat. 36 & 37 Vict. ch. 50, sec. 1. *In re Marquis of Salisbury and Ecclesiastical Commissioners*, 2 Ch. D. 29. See also *Dunlop* v. *Canada Southern R. W. Co.*, 45 U. C. Q. B. 74.

(*g*) If there be any person known who can be said, within the meaning of the first part of the section, to represent others, dealings should be had with him.

(*h*) See note *f* to sec. 484.

(*i*) A railway company agreed to pay a landowner, tenant for life, a sum of money for the benefit of him or other the owner for the time being, for indemnifying him from the expense of making a new road, &c., and as a compensation for the annoyance which he or such other owners might sustain in consequence of the construction of the railway; and the company agreed to pay a further sum as the price of the land taken. Both sums were paid into Court. The application of the tenant for life for the absolute payment to him of the first sum was refused. The costs of the road, &c., were paid out of it, and the rest invested. *Re Duke of Marlborough's Estates*, 13 Jur. 738; see also *Pole* v. *Pole*, 2 Dr. & Sm. 420, and *Earl of Shrewsbury* v. *North Staffordshire R. W. Co.*, L. R. 1 Eq. 593. See also *Owston* v. *Grand Trunk R. W. Co.*, 28 Grant 431. This section does not expressly authorize the payment into Court of money awarded for lands expropriated by a corporation. It is made obligatory on the corporation to ascertain whether the person acting in respect of the property is absolute owner and if not then it constitutes the corporation a trustee of the principal for the owner burdened with the payment of interest at six per cent. until the person entitled claims the principal. It was not intended that the court

cil shall not be bound to see to the application of any interest so paid, or of any sum paid under the direction of such Court. 46 V. c. 18, s. 488.

Purchase money subject to charges on property.

486. All sums agreed upon, or awarded in respect of such real property, shall be subject to the limitations and charges to which the property was subject. (*j*) 46 V. c. 18, s. 489.

Tender of compensation.

When lands taken or injured by city.

487—(1) Notwithstanding any of the provisions contained in this Act, in all cases where claims are made for compensation for damages by the owners or occupiers of, or other persons interested in lands entered upon, taken or used by the corporation of any city, or alleged to have been injuriously affected by such corporation in the exercise of any of its powers (*k*) in the event of the corporation not being able to agree with the claimant or claimants on the amount of

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should interfere at the instance of the corporation, though perhaps it may do so. *Beckett and City of Toronto*, 10 O. R. 106.

(*j*) In the absence of special clauses for that purpose, the effect of a provision enabling a person under disability, &c., to convey land for some authorized public purpose, is not to alter the course of devolution of property without the consent of the owner; and therefore if a municipal council, railway company, &c., contract with incapacitated persons for the purchase of land, the money is in equity to be considered as real and not personal estate. *Midland Counties R. W. Co.* v. *Oswin*, 8 Jur. 138. Money paid into court by a railway company for land taken from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, was ordered after his death not to be re-invested in or considered as land, but to be paid to his executors. *In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260. Money paid into court for land taken under the compulsory powers of the English Act 5 & 6 Will. IV. ch. 69, for a Poor Law Union, during the life of a tenant for life, who by the failure of intermediate limitations became tenant in fee simple, passed as real estate to his heir. *In re Horner's Estate*, 16 Jur. 1063. Where the purchase money of land, taken under the compulsory powers of an Act of Parliament for public purposes, is paid into court subject to be re-invested in the purchase of land, free of expense to the parties beneficially interested, on their petition, it is impressed with real uses, and is *prima facie* to be treated as real estate. *In re Stewart's Estate*, 16 Jur. 1063. If the person absolutely entitled to money for land has a right to elect to take it as personalty, a mere acquiescence in its remaining invested in consols during his life, and his will by which he bequeaths personal estate only and does not devise realty, are not such proofs of election as to prevent the funds descending on his death to his heirs. *Ib.* See further, *Dunlop* v. *York*, 16 Grant 216.

(*k*) See sec. 483 and notes thereto.

compensation to be made, and the amount claimed does not exceed $1,000, the same shall be settled and determined by the award of the Judge of the county within which the city is situate, (sitting as sole arbitrator), or at the option of either party, by such other sole arbitrator as the said Judge on application made by either party to him, upon notice to the other party, may appoint for the purpose.

(2) Either party shall be entitled to at least seven days' notice exclusive of the day of the service of the notice, of the wish of the other party to have an arbitration, and seven days' notice, exclusive of the seven days above mentioned and of the day of the service of the notice, shall be given of any application to the Judge to appoint any sole arbitrator as aforesaid.

(3) The fees to be paid to the arbitrator shall be the same as those payable to referees under the provisions of *The Act respecting Arbitrations and References.* 49 V. c. 37, s. 41 (1-3). Rev. Stat. c. 53.

488. The council of any municipality in all cases where claims for compensation or damages are made against them which, under the provisions of this or any other Act, are declared to be the subject of arbitration in the event of the parties not being able to agree, may tender to any person making such claim, such amount as they may consider proper compensation for the damage sustained or lands taken, and in the event of the non-acceptance by the claimant or claimants of the amount so tendered, and the arbitration being proceeded with, and if an award is obtained for an amount not greater than the amount so tendered, the costs of the arbitration and award shall, unless otherwise directed by the arbitrator, be awarded to the corporation and set off against any amount which shall have been awarded against them. 49 V. c. 37, s. 42. Reference of claims for compensation in respect of lands.

DIVISION II.—POWERS OF COUNCILS OF TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.

Respecting Polling Subdivisions. *Sec.* 489 (1).
" *Disqualification of Electors for Non-payment of Taxes.* *Sec.* 489 (2).
" *Water and Water Works.* *Sec.* 489 (3, 4).
" *Reduction of Sinking Fund.* *Sec.* 489 (5).

Respecting Billiard or Bagatelle Tables. *Sec.* 489 (6).
" *Victualling Houses, etc.* *Sec.* 489 (7, 8).
" *Licensing Transient Traders.* *Sec.* 489 (9).
" *Schools.* *Sec.* 489 (10).
" *Cemeteries.* *Sec.* 489 (11, 12).
" *Graves.* *Sec.* 489 (13).
" *Cruelty to Animals.* *Sec.* 489 (14).
" *Dogs.* *Sec.* 489 (15, 16).
" *Fences.* *Sec.* 489 (17).
" *Division Fences.* *Sec.* 489 (18, 19).
" *Snow Fences.* *Sec.* 489 (20).
" *Water-courses.* *Sec.* 489 (21).
" *Weeds.* *Sec.* 489 (22).
" *Filth in Streets.* *Sec.* 489 (23).
" *Burning Stumps, Brush, etc.* *Sec.* 489 (24).
" *Exhibitions, Shows, &c.* *Sec.* 489 (25, 26).
" *Trees.* *Sec.* 489 (27).
" *Injury to property and notices.* *Sec.* 489 (28, 29).
" *Gas and Water Companies.* *Sec.* 489 (30, 31).
" *Giving Intoxicating Liquors to Minors, etc.* *Sec.* 489 (32).
" *Public Morals.* *Sec.* 489 (33-40).
" *Nuisances.* *Sec.* 489 (41 46).
" *Sewerage and Drainage.* *Sec.* 489 (47-49).
" *Inspection of Meat, Milk, etc.* *Sec.* 489 (50-53).
" *Licensing milk dealers.* *Sec.* 489 (54).
" *Contagious Diseases.* *Sec.* 489 (55).
" *Establishment of Boundaries.* *Secs* 489 (56), 491.
" *Acquisition of Land outside the Limits.* *Sec.* 489 (57).
" *Weighing Machines.* *Sec.* 489 (58).
" *Pounds.* *Sec.* 490.
" *Extension of Sewers.* *Sec.* 492.
" *Lock-up Houses.* *Secs.* 458, 459.
" *Tavern and Shop Licenses.* *See Rev. Stat. Cap.* 194.

By-laws may be made for—

489. The council of every township, city, tow nor incorporated village may pass by-laws :—

Polling Subdivisions.

Dividing city or town into wards, etc.

1. For dividing the wards of such city or town, or for dividing such township or incorporated village into two or more convenient polling subdivisions, and for establishing

polling places therein, and for repealing or varying the same from time to time; and such polling subdivisions shall be made or varied whenever the electors in any ward, township, village or polling subdivision exceed 200, and shall be made and varied in such a manner that the number of electors in any polling subdivision shall not exceed at any time 200; (*a*)

And townships and villages into polling subdivisions, etc.

(*a*) Where a municipality is divided into polling subdivisions, the same polling subdivisions shall be used both for the election of members of the Legislative Assembly and for municipal elections; and the polling subdivisions for elections to the Legislative Assembly and municipal elections shall hereafter be made the same in all cases, except that the municipal council of every city, town or incorporated village, may by by-law unite, for the purposes of municipal elections, any two adjoining polling subdivisions; 46 V. c. 18, s. 490 (1).

Polling subdivisions to be the same for elections to Legislative Assembly and municipal elections.

Adjoining subdivisions may be united for Municipal elections.

(*b*) Where a polling place has been fixed by by-law for the holding of any election, or the taking of any vote in any city, town or village, and it is afterwards found that the building named as such polling place cannot be obtained, or is unsuitable for the purpose, the clerk of the municipality shall have the power to choose in lieu thereof as a polling place the nearest available building suitable for the purpose, and shall post up and keep posted up a notice on the building fixed by the by-law, and in two other conspicuous places near by, directing the voters to the place chosen as aforesaid; 50 V. c. 29, s. 22.

Disqualification of Electors not paying Taxes.

Disqualifying electors in arrear for taxes.

2. For disqualifying any elector from voting at municipal elections who has not paid all municipal taxes due by him on or before the 14th day of December next preceding the election; (*b*) 46 V. c. 18, s. 490 (2). *See also sec.* 251.

(*a*) Under the circumstances stated, it is made obligatory to create polling subdivisions.

(*b*) It is submitted that a by-law under this sub-section should be passed a sufficient time before the election to give persons in default an opportunity to obtain the restoration of their franchise under the provisions of sec. 81.

Water and Waterworks.

Constructing waterworks.

3. For constructing, building, purchasing, improving extending, holding, maintaining, managing, and conducting waterworks and all buildings, materials, machinery, and appurtenances thereto belonging in the municipality and in the neighbourhood thereof, subject to the provisions contained in *The Municipal Water-works Act*; 46 V. c. 18, s. 496 (2).

Rev. Stat. c. 192.

Regulating the use of water.

4. For compelling the use of water, supplied by the water works of the city, town, township, or village, for drinking and domestic purposes, within certain areas to be defined by by-law, and for prohibiting the use of spring or well water within such areas for such purposes; 49 V. c. 37, s. 38 (1); 50 V. c. 29, s. 48.

Reduction of Sinking Fund.

Reduction of sinking fund.

5. For authorizing the reduction of the annual sinking fund rate, or amount required to be collected under local improvement by-laws passed by the council prior to the Act passed in the 42nd year of the reign of Her Majesty, chaptered 31, and for making allowance for the interest accrued from the investment of the amounts of sinking fund heretofore collected under such by-laws; provided always that in settling the sum to be raised annually for the remaining years which any such by-law has to run for the payment of the debt, in lieu of the sinking fund rate, fixed by the original by-law, the rate of interest on future investments shall not be estimated at more than five per cent. per annum, to be capitalized yearly; provided also that no by-law reducing the sinking fund rates, fixed by any such local improvement by-law shall become valid or effectual until the same shall have been assented to by the Lieutenant-Governor in Council; 49 V. c. 37, s. 38 (2); 50 V. c. 29, s. 48.

Billiard or Bagatelle Tables.

Licensing and regulating the use of billiard and bagatelle tables.

6. For licensing, regulating and governing all persons who, for hire or gain, directly or indirectly keep, or have in their possession, or on their premises, any billiard or bagatelle table or who keep or have a billiard or bagatelle table in a house or place of public entertainment or resort, (c) whether such billiard or bagatelle table is used or not, and for fixing

(c) As to the power of the license commissioners in regard to billiard tables in taverns. See *Hodge* v. *Regina*, 9 App. Cas. 117.

the sum to be paid for a license so to have or keep such billiard or bagatelle table, and the time such license shall be in force; (*d*)

Victualling Houses, etc.

7. For limiting the number of and regulating victualling houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for reception, refreshment or entertainment of the public; (*e*) Victualling houses, etc., number and regulation of.

8. For licensing the same when no other provision exists therefor, and for fixing the rates of such licenses not exceeding $20; (*f*) License and fees for same.

(*d*) From a very early period in the history of this Province, persons keeping billiard tables for hire have been subject to legislative control. See 50 Geo. III. ch. 6; see also *Church q. t.* v. *Richards*, 6 U. C. Q. B. 562. In some instances power was given to *suppress* such a use of billiard tables. See *Rex* v. *Home District*, 4 U. C. Q. B. O. S. 9; see further *People* v. *Sergeant*, 8 Cow. (N.Y.) 139. The power here conferred is only to *license*, *regulate*, and *govern*. Power to license or regulate does not confer power to suppress. See *Yates* v. *Milwaukee* 10 Wall. (U. S.) 497. A by-law requiring payment of $300 for a license is not a prohibitory by-law. *In re Neilly and Owen Sound*, 37 U. C. Q. B. 289. It is in the power of a municipal council to insist that there shall be no internal communication between from the room in which the billiard table is placed and any room or place in which spirituous liquors are sold. *Ib.* See also Rev. Stat. c. 194, s. 74. A by-law that no billiard table shall be kept in a tavern or inn is good. *In re Arkell and St. Thomas*, 38 U. C. Q. B. 594. On the trial of a billiard-table keeper charged with allowing a minor to play at billiards without the consent of his parent or guardian, the burden of proving that the parent or guardian did not consent is on the prosecution. *Conyers* v. *The State*, 15 Am. 686. See the *Act to Prevent Minors frequenting Billiard Rooms and other Places* Rev. Stat. c. 204.

(*e*) Under a general power to pass by-laws "for the *well-being* of the city," it has been held that there is power to regulate restaurants and other places of public resort. *State* v. *Freeman*, 38 N. H. 426. See also *State* v. *Clark*, 8 Fost. (N. H.) 176; *Morris* v. *Rome*, 10 Geo. 532; *Hudson* v. *Geary*, 4 Rh. Is. 485. A room for the sale of lemonade and ginger beer is a place for the entertainment of the public. *Howes* v. *Board of Inland Revenue*, 1 Ex. D. 385.

(*f*) Exacting payment of a fee for a license to be allowed to follow a particular vocation within a municipality is not the imposition of a tax. *City* v. *Clutch*, 6 Iowa 546; *Mobile* v. *Yuille*, 3 Ala. 137; *Boston* v. *Schaffer*, 9 Pick. (Mass.) 415. See also *Cincinnati* v. *Bryson*, 15 Ohio 625; *New Orleans* v. *Turpin*, 13 La. An. 56; *Municipality* v. *Dubois*, 10 La. An. 56; *Charity Hospital* v. *Stickney*, 2 La. An. 550; *Carrol* v. *Mayor, &c.*, 12 Ala. 173; *Mayor, &c.* v. *Hartridge*, 8 Geo. 23. Under a power "to license, regulate and restrain amusements," it was considered there was power to exact payment of a

Licensing Transient Traders.

Regulating transient traders.

9. For licensing, regulating and governing transient traders, and other persons who occupy premises in the city or town, incorporated village, or township, for temporary periods, and whose names have not been duly entered on the assessment roll in respect of income or personal property for the then current year ; and who may offer goods or merchandise of any description for sale by auction, or in any other manner conducted by themselves or by a licensed auctioneer or otherwise ; but no such by-law shall affect, apply to, or restrict the sale of the stock of an insolvent estate which is being sold or disposed of within the county in which the insolvent carried on business therewith at the time of the issue of a writ of attachment or of the execution of an assignment ; (*g*) 46 V. c. 18, s. 490 (3-6).

9*a*. Or for requiring all transient traders who occupy premises in the municipality, and are not entered upon the assessment roll in respect of income or personal property, and who may offer goods or merchandise of any description for sale by auction, or in any other manner, conducted by themselves or by a licensed auctioneer, or by their agent or other-

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speeifie sum for the privilege, this being considered as a means neeessary to the regulation of them. *Hodges* v. *Mayor*, 2 Hump. (Ten.) 61. See also *Carter* v. *Dow*, 16 Wis. 298 ; *Tenny* v. *Lenz*, *Ib.* 566 ; *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462. So under a power to license "on such terms and conditions as may be just and reasonable." *Boston* v. *Schaffer*, 9 Pick. (Mass.) 419 ; but see *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562. But power merely "to make by-laws *relative* to hucksters, grocers, and victualling shops" is not sufficient to enable the municipality to exaet money for a license. See *Dunham* v. *Rochester*, 5 Cow. (N. Y.) 462 ; *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562 ; *Mays* v. *Cincinnati*, 1 Ohio St. 268.

(*g*) Traders who live in the municipality throughout the year cannot well escape taxation ; but those who come into the municipality after the assessment roll is completed, or leave it before the collector's roll is in the hands of the collectors, would escape if there were no such provision as the present. The power to license includes the power to charge a reasonable fee, and to prevent the doing of business until such fee is paid. See sec. 495, sub-s. 3 and notes thereto as to hawkers, &c. See also the next sub-section. Where goods are consigned to be sold on commission, and they are sold on the premises of the consignee, and by him, or on his behalf, the owner of the goods or his manager is not an occupant of such premises, nor a transient trader within this provision merely because he accompanies the goods and assists in their sale. *Reg.* v. *Cuthbert*, 45 U. C. Q. B. 19. See also *Jonas* v. *Gilbert*, 5 S. C. R. 356.

wise, to pay before commencing to trade a sum, in cities, not to exceed $100, and in other municipalities not to exceed $50 by way of license, and for providing that the sum so paid as license shall be credited to the trader paying the same upon and on account of taxes for the unexpired portion of the then current year, as well as any subsequent taxes, should such trader remain in the municipality a sufficient time for taxes to become due and payable by him, and in any other event to be taken and used by the municipality as a portion of the license fund of such municipality: but no such by-law shall affect, apply to, or restrict the sale of the stock of an insolvent estate which is being sold or disposed of within the municipality in which the insolvent carried on business therewith, at the time of the issue of a writ of attachment or of the execution of an assignment; (*h*) 51 V. c. 28, s. 23.

Schools.

Acquiring land for public schools, etc.

10. For obtaining such real property as may be required for the erection of public school-houses thereon, and for other public school purposes, (*i*) and for the disposal thereof when no longer required; (*j*) and for providing for the establishment and support of public schools according to law; (*k*) 46 V. c. 18, s. 490 (7).

Cemeteries.

Acquiring land for cemetries, etc.

11. For accepting or purchasing land for public cemeteries, as well within as without the municipality, (*l*) but not within

(*h*) See the preceding note.

(*i*) See notes *a* and *b* to sub-s. 1 of s. 479.

(*j*) See note *c* to sub-s. 1 of s. 479.

As to the duty of municipal councils to provide money on the requisition of school trustees. See *In re School Trustees and Sandwich*, 23 U. C. Q. B; 639; *In re Doherty* v. *Toronto*, 25 U. C. Q. B. 409; *In re School Trustees* v. *Port Hope*, 4 U. C. C. P. 418; *In re Dunlop and Douro*, 18 U. C. Q. B. 227; *In re School Trustees and Toronto*, 20 U. C. Q. B. 302; *Ib.*, 23 U. C. Q. B. 203; *In re Coleman and Kerr*, 27 U. C. Q. B. 5. A county council may, under some circumstances, own land held for school purposes, although situate within the limits of a city. *County of Carleton* v. *Public School Board of Ottawa*, 25 U. C. C. P. 137.

(*l*) As a rule, the jurisdiction of every council is confined to the municipality the council represents. See note *k* to sec. 20. Here an authority beyond the limits of the municipality is given. That

any city, town or incorporated village, except as hereinafter provided, and for laying out, improving and managing the same; (*m*) but no land shall be accepted or purchased for such purpose except by a by-law declaring in express terms that the land is appropriated for a public cemetery, and for no other purpose; and thereupon such land, although without the municipality, shall become part thereof, and shall cease to be a part of the municipality to which it formerly belonged; and such by-law shall not be repealed; and the trustees of any burying ground or cemetery or the cemetery company owning any burying ground or cemetery may agree for the sale or transfer thereof to the municipality which desires to acquire the same; and in cases where such grounds

Proviso.

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authority is to accept or purchase land for public cemeteries, as well within as *without* the municipality. The acceptance or purchase is to be by by-law, declaring in express terms that the land is appropriated for a public cemetery, and *for no other purpose*. When this is done, the land, although without the municipality, becomes part thereof for purposes of local government. This provision differs in this respect from that in sub-s. 57 of this sec., which provides for the acquiring and holding by purchase or otherwise, for the public use of the municipality, lands situate outside the limits of such township, city, town, or incorporated village, but the lands so acquired shall not form part of the municipality of such township, city, town, or incorporated village, but shall continue and remain as of the municipality where situate.

(*m*) Under a power to a city corporation "to establish cemeteries or burial places within or without the city," it was held that the city was authorized to establish cemeteries of its own and to regulate them, but that the council was not empowered to subject to the control of the city sexton cemeteries, other than those belonging to the city, nor to pass a by-law for prohibiting lot owners in private cemeteries, though within the city limits, from entering to bury their dead without permission of the city sexton and the payment of a fee to him. *Bogert* v. *Indianapolis*, 13 Ind. 134. If the burden to support a cemetery be cast on all the citizens, a by-law imposing the burden on a particular class would be bad. *Beurojohn* v. *Mayor, &c.*, 27 Ala. 58. Cemeteries are not *per se* nuisances. It is not enough to compel their removal to shew that they affect the value of property in the neighbourhood. *New Orleans* v. *St. Louis*, 11 La. An. 244; *Musgrove* v. *The Catholic Church of St. Louis*, 10 La. An. 431; *Lake View* v. *Letz*, 44 Ill. 81; see further note *p* to sub. 13 of this section. Cemeteries are not to be subjected to sale to satisfy liens on them for the improvement of adjoining streets, especially where the disturbance of cemeteries is a criminal offence. *Louisville Nevin*, 19 Am. 78. So, a municipal corporation cannot, without v. special authority given by Statute, take for a highway the lands of a cemetery. *Trustees of First Evangelical Church* v. *Walsh*, 11 Am. 21; *Evergreen Cemetery Association* v. *City of New Haven*, 21 Am. 643.

have not been used for burials, the municipality may dispose thereof, and acquire other ground instead thereof; 46 V. c. 18, s. 490 (8); 51 V. c. 28, s. 22.

Selling portion of such land for certain purposes.

(*a*) For selling or leasing portions of such land for the purpose of interment, in family vaults or otherwise, and for declaring in the conveyance the terms on which such portion shall be held; (*n*) 46 V. c. 18, s. 490 (9).

(*b*) Provided, however, that the municipal council of an incorporated village may pass a by-law for accepting or purchasing land for a public cemetery within the territorial limits of the village upon the by-law being first approved of by the local board of health, and ratified by the provincial board of health; and the by-law shall thereupon be as valid and effectual as if the land was situated without the municipality;

(*c*) All expenses incurred by the provincial board of health, in respect of and incidental to the by-law, and whether the by-law be ratified by the board or not, shall be paid by the village municipality to the secretary of the board; 50 V. c. 29, s. 23. *See* Rev. Stat. caps. 175, 176.

Enlargement of Cemeteries.

Councils may pass by-laws for taking lands.

12. For the acquiring and expropriation of lands to be used for enlarging any existing public cemetery or burying ground, but no expropriation of any land within the limits of a city shall be authorized, and as to any such enlargement in a village or town the consent of the provincial board of health shall be first obtained;

Reference to arbitration.

(*a*) In case the owner of the land required refuses to sell the same, or refuses to take the price the council of the municipality is willing to pay, then in either of such cases the matter in dispute shall be referred to arbitration, and shall be proceeded with under the provisions of this Act, respecting arbitrations as to compensation for lands taken; (*o*)

(*n*) There is no limitation as to the interest to be conveyed. When a municipality is seised in fee simple, the conveyance may be made either forever or for years. The power is to "sell" or "lease."

(*o*) See sec. 385 *et seq.*

(b) The arbitrators shall decide whether it is necessary in the public interests that the lands should be expropriated for the aforesaid purposes or any of them, and if so decided they shall award as to the price to be paid to the owner of said lands, but the costs shall be in the discretion of the arbitrators.

(c) If the arbitrators award that the lands shall be taken for such cemetery, or burying ground, one copy of the award shall be deposited with the registrar of the county or city, as the case may be, in which the lands are situate, and shall be a valid title to the said lands.

Certain lands not to be taken except with consent of owner.

(d) No lands used as an orchard, pleasure ground or garden, nor any lands within two hundred yards of any dwelling-house shall be expropriated without the consent of the owner or owners of such dwelling-house.

Boundaries to be described in award.

(e) The award shall be in writing and the boundaries of the lands or premises taken shall be fully described therein.

Sub-ss 11 and 13 to apply.

(f) All the provisions of sub-sections 11 and 13 of this section shall, as far as applicable, apply to the lands acquired under this sub-section. 48 V. c. 38, ss. 1-5.

Protection of Graves.

Protecting graves.

13. For preventing the violation of cemeteries, graves, tombs, tombstones, or vaults where the dead are interred; (p)

(p) The proper interment of the dead is a matter that deeply concerns the health of the living, and is therefore a proper subject for municipal control. *New York* v. *Slack*, 3 Wheel. Cr. C. (N.Y.) 237; *Presbyterian Church* v. *New York*, 5 Cow. (N.Y.) 538, *Coates* v. *New York*, 7 Cow. (N.Y.) 585; *Commonwealth* v. *Fahey*, 5 Cush. (Mass.) 408. See also *Austin* v. *Murray*, 16 Pick. (Mass.) 121. It has been held in the United States that burials are not matters of ecclesiastical cognizance; that the right to bury a corpse and preserve its remains is a legal right, belonging, in the absence of testamentary disposition, exclusively to the next of kin, and includes the right to select and change the place of sepulture at pleasure, and that if the place of burial be taken for public use, the next of kin may claim indemnity for the expense of removing and suitably interring the remains. *In re Beekman Street*, 4 Bradf. (N.Y.) 503-532; see also *Bogart* v. *Indianapolis*, 13 Ind. 143; *In re Brick Presbyterian Church*, 3 Edw. Ch. Rep. (N.Y.) 155; *Lowry* v. *Plitt*, 13 U. C. L.

Cruelty to Animals.

14. For preventing cruelty to animals; (*q*) and for preventing the destruction of birds; (*r*) the by-laws for these purposes not being inconsistent with any statute in that behalf; Preventing cruelty to animals, and destruction of birds.

Dogs.

15. For restraining and regulating (*s*) the running at large Regulations as to dogs.

J. N. S. 112. It has been held that it is an indictable offence to take up a dead body even for the purpose of dissection. It has been held that to sell the dead body of a capital convict for the purpose of dissection, where dissection was no part of the sentence, is misdemeanor, and indictable at common law. 1 Russell on Crimes, 4th ed. 629. A dead body is not property in the strict sense of the term, but a *quasi* property over which the relations of the deceased have rights which the courts will protect. *Pierce* v. *Swan Point Cemetery*, 14 Am. 667. The reasonable and necessary expenses of the burial of a deceased person will be allowed to the executor in the settlement of his accounts. *Patterson* v. *Patterson*, 17 Am. 384.

(*q*) A cock has been held to be a domestic animal within the meaning of the English statutes for the prevention of cruelty to animals. *Budge* v. *Parsons*, 3 B. & S. 382; see further *Morley* v. *Greenhalgh*, *Ib.* 374; *Clarke* v. *Hague*, 2 E. & E. 281; *Coyne* v. *Brady*, 12 Ir. C. L. R. 577; see also *Murphy* v. *Manning*, 2 Ex. D. 307. The word "cattle" used in the English statute, 28 & 29 V. c. 60, s. 1, has been held to include horses and mares. *Wright* v. *Pearson*, L. R. 4 Q. B. 582. See the Act of Canada respecting cruelty to animals, R. S. C. c. 172. A bequest for founding and upholding an institution for studying and curing maladies of quadrupeds or birds useful to man is a good charitable legacy. *University of London* v. *Yarrow*, 23 Beav. 159; 2 Jur. N. S. 1125; affirmed on appeal; 1 De G. & J. 72; 3 Jur. N. S. 421.

(*r*) As to protection of insectivorous and other birds, see Rev. Stat. c. 222.

(*s*) The power is not merely to "regulate," but to "restrain" the running at large of dogs. This may be read in connection with the next sub-section, which provides "for killing dogs" running at large contrary to the by-laws. The validity of laws providing for the forfeiture or destruction of property without compensation to the owners, has been doubted. See note *a* to sec. 483. But it is now settled that all rights of property are held subject to such reasonable control and regulation as the Legislature may think necessary for the preventing of injuries to the rights of others, and the security of the public health and welfare. In the exercise of this power, the Legislature may not only provide that certain kinds of property, either absolutely or when held in such a manner or under such circumstances as to be injurious, dangerous or noxious, may be seized and confiscated upon legal process, after notice and hearing, but may also, when necessary to insure the public safety, authorize

of dogs, and for imposing a tax on the owners, possessors

such property to be summarily destroyed by the municipal authorities, without previous notice to the owner. *Per* Gray, J., in *Blair* v. *Forehand*, 100 Mass. 136; *S. C.* 1 Am. R. 94; and *per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 241-243. A familiar example given is that of pulling down buildings to prevent the spreading of conflagration, or the impending fall of the buildings themselves. *Mouse's Case*, 12 Co. 63, *Ib.* 13; *Maleverer* v. *Spink*, 1 Dyer, 56; *Governor* v. *Meredith*, 4 T. R. 794; 15 Vin. Abr. Title "Necessity," pl. 8; 2 Kent Com. 338; *Respublica* v. *Sparhawk*, 1 Dallas (Pa.) 357; *Taylor* v. *Plymouth*, 8 Met. (Mass.) 462, 465; *New York* v. *Lord*, 18 Wend. (N.Y.) 126; *Cornwell* v. *Emrie*, 2 Ind. (Cart.) 35; *Field* v. *Des Moines*, 39 Iowa 575; *S. C.* 18 Am. 46; see also *American Print Works* v. *Lawrence*, 3 Zabr. (N.J.) 590; *Commonwealth* v. *Alger*, 7 Cush. (Mass.) 85; *Fisher* v. *McGirr*, 1 Gray (Mass.) 27; *Parsons* v. *Pentingell*, 11 Allen (Mass.) 512; *Eastern Railroad Co.*, 98 Mass. 443; *License Cases*, 5 How. (U.S.) 581, 589, 632. *Dillon* on Municipal Corporations, 3rd ed. 955 *et. seq.* There is no kind of property over which the exercise of this power is more frequent or supposed to be more necessary than dogs. In the view of the common law, dogs of all sorts had no intrinsic value, and the owner was held to have so little property in them that the stealing of them was not larceny. *Reg.* v. *Robinson*, 8 Cox, C. C. 115; *Mason* v. *Keeling*, 1 Ld. Rayd. 608; *Read* v. *Edwards*, 17 C. B. N. S. 245. But see *Harrington* v. *Milles*, 15 Am. 355, and notes. The law has long made a distinction between dogs, cats, and other domestic quadrupeds, growing out of the nature of the creatures and the purposes for which they are kept. Beasts which have been thoroughly tamed, and are used for burden or husbandry, or for food, such as horses, cattle, and sheep, are as truly property of intrinsic value, and entitled to the same protection as any kind of goods. But dogs and cats, even in a state of domestication, never wholly lose their wild nature and destructive instincts, and are kept either for uses which depend on retaining and calling into action those very natures and instincts, or else for the mere whim and pleasure of the owner. *Per* Gray, J., in *Blair* v. *Forehand*, 1 Am. R. 96. Dogs have always been entitled to less regard and protection than more harmless and useful domestic animals. *Reg.* v. *Rymer*, 2 Q. B. D. 136; *Laverone* v. *Mangianti*, 10 Am. 269; *Meibus* v. *Dodge*, 20 Am. 6; *Putnam* v. *Payne*, 13 Johns. (N.Y.) 312; *Brown* v. *Carpenter*, 26 Vt. 638; *Woolf* v. *Chalker*, 31 Conn. 121. In the case of a by-law against the running at large of dogs, the object of the by-law is not to prevent or punish trespasses upon property, but to protect the people of a city or town against danger to their lives—against threatened death in perhaps its most distressing form. *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250, 251. The most effective mode for protecting people from such a danger is the annihilation of the cause of danger; and so, under a statute which merely authorized the corporation to pass by-laws for "preventing and regulating" dogs running at large, it was held that the corporation had power to pass a by-law for the killing of dogs running at large in violation of the provisions of the by-law. *Ib.* 241. By the statute, the Legislature have not left the power to inference, but conferred it in express language. Sub-s.

or harbourers of dogs; (*t*)

16. For killing dogs running at large contrary to the by-laws; (*u*) Killing dogs.

Fences.

17. For settling the height and description of lawful fences; and for regulating and settling the height, description and manner of maintaining, keeping up and laying down fences along highways or any part or parts thereof, and for making compensation for the increased expenses, if any, to persons required so to maintain, keep up or lay down such last mentioned fences or any part thereof; (*v*) *See* sec. 511 (3). Fences.

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16. It is to be observed that the power either to restrain, regulate or kill is only to be exercised as to "dogs running at large." Therefore, where an officer, under such a by-law, entered a dwelling house, took the dog from the dwelling house, and afterwards killed it, he was held liable to the owner. *Bishop* v. *Fahay*, 15 Gray (Mass.) 61; *Kerr* v. *Seaver*, 11 Allen (Mass.) 151. If the power were to kill "whenever and wherever found," the officer would have a right peaceably to enter for that purpose, without permission, upon the close of the owner or keeper of the dog, and there kill it. *Blair* v. *Forehand*, 1 Am. 94. As to when dogs can be said to be "running at large," see *Commonwealth* v. *Dow*, 10 Metc. (Mass.) 382. The council of a township has no power to appropriate the revenue arising from a tax imposed on the owners of dogs in one part of the township to the improvements of public streets and to other purposes within the limits of such part. *In re Richmond* v. *Front of Leeds and Lansdowne*, 8 U. C. Q. B. 567.

(*t*) Besides the power to restrain, regulate and, if necessary, kill dogs, the additional power here conferred is to provide by by-law for imposing a tax on the owners, possessors or harbourers of dogs. "The imposing a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out for indirectly restraining or prohibiting the keeping of dogs by imposing a tax on them." *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 246. See further the *Act to impose a Tax on Dogs and for the Protection of Sheep*. Rev. Stat. c. 214, and *Williams* v. *Port Hope*, 27 U. C. C. P. 548.

(*u*) See the notes to preceding sub-section.

(*v*) An owner or occupier of lands, though bound to take care that his cattle do not wander from his own land and stray upon the lands of another, is not by the common law under any obligation to put up or maintain a fence. *Hilton* v. *Ankesson*, 27 L. T. N. S. 519 Ex. See also *Wells* v. *Howell*, 19 Johns. (N. Y.) 385; *Stafford* v. *Ingersol*, 3 Hill (N.Y.) 38; *Laurence* v. *Jenkins*, L. R. 8 Q. B. 274; *Erskine* v. *Adeane*, L. R. 8 Chy. 756. Such an obligation can only be founded upon prescriptive statutory obligation, by-law, agreement or cove-

Division Fences.

Division fences, and cost thereof.

18. For regulating the height, extent and description of lawful division fences; and for determining how the cost thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act; but until such by-laws are made, the Acts respecting line fences and ditching water courses shall continue applicable to the municipality;

Provisions until by-laws made. Rev. Stat. cc. 219, 220.

Barbed-wire fences.

19. For providing proper and sufficient protection against injury to persons or animals by fences constructed wholly or in part of barbed wire or any other material; (*w*)

Snow Fences.

Snow fences.

20. For requiring owners or occupiers of lands bordering upon any public highway, to take down, alter, or remove any fence or fences, subject to the provisions of *The Act Respecting Snow Fences*; *See* sec. 511 (3).

Rev. Stat. c. 198.

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nant. *Ib.* If the obligation to fence exist, it is in general absolute—the act of God or *vis major* only excepted. It is no defence therefore, in such a case that the defendant had no notice of the want of repair. *Laurence* v. *Jenkins*, L. R. 8 Q. B. 274. Provision is made as to line fences by Rev. Stat. c. 219. If there be a duty to fence, the neglect of it deprives the person upon whom the duty devolves of the right to complain of injuries suffered by his animals. *Cincinnati H. & D. Railroad Co.* v. *Waterson*, 4 Ohio St. 424, or by the entry of animals on his land for want of a sufficient fence. *York* v. *Davis*, 11 N. H. 241. See also *Rust* v. *Low*, 6 Mass. 90. Where the legislature imposed a penalty of $100 upon railways for every month's delay in performing the duty of maintaining and keeping legal and sufficient fences, it was held that the neglect of the corporation to perform the duty rendered them liable to reimburse any person suffering injury thereby. *Norris* v. *Androscoggin Railroad Co.*, 39 Maine 273. So it has been held that any one who voluntarily suffers his cow to go at large in the public streets of a city contrary to its by-laws, with no one to take charge of her, and thus to stray upon a railroad track at the time when the cars are passing, cannot recover against the company without proof of gross negligence on their part. *Bowman* v. *Troy and Boston Railroad Co.*, 37 Barb. (N.Y.) 516. See also *Bellefontaine and Indiana Railroad Co.*, v. *Bailey*, 11 Ohio St. 333; *Louisville, &c., Railroad Co.* v. *Ballard*, 2 Met. (Ky.) 177.

(*w*) In *Hillyard* v. *Grand Trunk R. W. Co.*, 8 O. R. 583, it was held that a barbed wire fence constructed upon an ordinary country road could not be treated as a nuisance in the face of this provision by which the use of such fences seems to be sanctioned. It was also held in the same case that evidence of the use of such fences in other townships and that other municipalities held out inducements to erect them was admissible.

Water Courses.

21. For compelling the owners of lands through which any open drain or water course passes to erect and keep up water gates where fences cross such drain or water course, and for preventing persons obstructing any drain or water course; (*x*). Water-courses.

Weeds.

22. For preventing the growth of Canada thistles and other weeds detrimental to husbandry, and compelling the destruction thereof; (*y*) for the appointment of an inspector with power to enforce the provisions of such by-law; for regulating his duties, and determining the amount of remuneration, fees or charges he is to receive for the performance of such duties; *See also* Rev. Stat. c. 202. Prevention of growth of thistles and weeds.

Filth in Streets.

23. For preventing persons from throwing any dirt, filth, carcases of animals, or rubbish, on any street, road, lane, or highway; (*yy*). Preventing throwing of dirt, etc., in streets, etc.

Burning Stumps, Brush, etc.

24. For regulating the times during which stumps, wood, logs, trees, brush, straw, shavings, or refuse, may be set on Regulating the burning of stumps, trees, brush, etc.

(*x*) It is the duty of a person who constructs a dam so to construct it, with waste gates or otherwise, as to permit the passage of the water, and to keep the waste gates in a dam free for the passage of water. *Schuylkill Navigation Co.* v. *McDonough*, 33 Pa. St. 73. If a dam be so improperly constructed as to cause ice to accumulate, and on the ice breaking up in the spring the fields adjoining the dam are injured, the proprietor is liable for special injuries caused by such accumulations of ice. *Bell* v. *McClintock*, 9 Watts. (Pa.) 119. See also *Cowles* v. *Kidder*, 24 N. H. 364; *sed qu.* see *Smith* v. *Agawam Canal Co.*, 2 Allen (Mass.) 355. See note (*z*) to sub-s. 24.

(*y*) As to the duty of railway companies to remove thistles and other noxious weeds from their lands. See Rev. Stat. c. 170 s. 107.

(*yy*) The allowance of dirt, filth, carcases of animals, and other rubbish on the streets, would be the allowance of nuisances. The right of the public to the healthy and unrestricted use of the public highways should be of the first concern to municipal bodies. See *People* v. *Cunningham*, 1 Denio (N. Y.) 524. It has been held to be an indictable offence to expose a person having a contagious disease, as the small-pox, on a public highway. *Rex* v. *Vantandillo*, 4 M. & S. 73; *Rex* v. *Burnett*, *Ib.* 272.

fire or burned in the open air, (z) and for prescribing precautions to be observed during such times, and for preventing such fires being kindled at other times; 46 V. c. 18, s. 490, (10-21) *See* Rev. Stat. c. 213.

Exhibitions, Places of Amusement, etc.

Regulating public

25. For preventing or regulating and licensing exhibitions

(z) The kindling of a fire, in a municipality where such a by-law exists, at a time other than that prescribed by the by-law, or in disregard of the precautions made necessary by the by-law, would be strong, if not conclusive evidence of negligence. An owner of land, who without wilfulness or negligence, uses his land in the ordinary manner, though mischief should be thereby occasioned to his neighbour, will not be liable to damages. But if he bring upon his land anything which would not naturally come upon it, and which in itself is dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable to damages for any mischief thereby occasioned. *Fletcher* v. *Rylands*, L. R. 1 Ex. 265, 279; L. R. 3 H. L. 330; *Carstairs* v. *Taylor*, L. R. 6 Ex. 217; *Smith* v. *Fletcher*, L. R. 7 Ex. 305; *Ross* v. *Fedden*, L. R. 7 Q. B. 661. But so far as fire is concerned, the law seems, for the present at all events, to stand upon a different footing. *Wilkins* v. *Row*, 15 U. C. C. P. 325; *Buchanan* v. *Young*, 23 U. C. C. P. 101; *Gillson* v. *North Gray R. W. Co.*, 33 U. C. Q. B. 128; 35 U. C. Q. B. 475; *Murphy* v. *Dalton*, 5 O. R. 541; *Furlong* v. *Carrol*, 7 A. R. 145. It is not very long since this country was altogether a wilderness. Till the land is cleared it can produce nothing, and burning the wood is a necessary part of the operation of clearing. If it could be shewn that this business of clearing land could, by means which we can suppose to be within the reach of those employed in it, be done at a time or in a manner that would make it wholly independent of any accident beyond the control of the party, then, perhaps, the bare fact of not having taken those means might be held to constitute negligence. *Per* Robinson, C. J., in *Dean* v. *McCarthy*, 2 U. C. Q. B. 448, 450; see also *Ryan* v. *New York Central R. W. Co.*, 35 N. Y. 210; *Calkins* v. *Barger*, 44 Barb. (N.Y.) 424; *Stuart* v. *Hawley*, 22 Ind. 619; *Fawn* v. *Reichart*, 8 Wisc. 255; *Clark* v. *Foot*, 8 Johns. (N.Y.) 421; *Hanlon* v. *Ingram*, 8 Iowa, 81; *Averritt* v. *Murrell*, 4 Jones (N.C.) 323; *Bennett* v. *Scutt*, 18 Barb. (N.Y.) 347. By the common law an action lies against the party by whose negligence or that of his servants a fire arises on his premises and damages the property of another. *Filliter* v. *Phippard*, 11 Q. B. 347; See also *Barnard* v. *Poor*, 21 Pick. (Mass.) 378. One who purposely sets fire to anything upon his own premises is bound to use ordinary care to avoid damage thereby to the property of another. *Scott* v *Hale*, 16 Maine 326. The burden of proof in this, as in other cases of negligence appears to rest on the plaintiff. *Tourtellot* v. *Rosebrook*, 11 Met. (Mass.) 460; *Bachelder* v. *Heagen*, 18 Maine, 32; *Calkins* v. *Barger*, 44 Barb. (N.Y.) 424, *Jordan* v. *Wyatt*, 4 Gratt. (Va.) 151. But see *Tuberril* v. *Stamp*, 1 Salk. 13; *Hanlon* v. *Ingram*, 3 Iowa, 81.

of wax work, menageries, circus-riding, and other such like shows usually exhibited by showmen, and for regulating and licensing roller skating rinks, and other places of like amusement; and for requiring the payment of license fees for authorizing the same, not exceeding $500 for every such license; and for imposing fines on such persons infringing such by-laws; and for levying the same by distress and sale of the goods and chattels of such showman, or belonging to or used in such exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month; (a)

shows, and licensing same.

Fines for infraction.

(a) It shall not be lawful for the council of any municipal corporation, or the commissioners of police in any city, to grant licenses or license certificates to persons having exhibitions of any work or circus-riding, or other shows of a like character, or places of gambling, or to those engaged in traffic in fruits, goods, wares or merchandise of whatever description, for gain, on the days of the exhibition of the Agricultural Association of Ontario, or of any electoral district or township agricultural society, either on the grounds of such society, or within the distance of 300 yards from such grounds. 46 V. c. 18, s. 490 (22); 49 V. c. 37, s. 12; 50 V. c. 29 s. 24.

Licenses not to be granted for certain times and places.

(a) Where the power is given to license a particular occupation such power involves the necessity of determining with reasonable certainty both the extent and duration of the license and the sum to paid therefor; and must be exercised by the council and cannot be delegated to any person or authority. See *Dillon* on Municipal Corporations, 3rd ed., sec. 357. In the United States a distinction has been made in the use of the words "regulate" and "license," as used in reference to useful trades and employments, and as used in reference to amusements, exhibitions, &c. As to the former, there is no right, unless such appears to have been the legislative intent, to use the license as a mode of taxation with a view to revenue and perhaps to prohibition; but as regards the latter, more extensive powers may be exercised under the same words. *Ib.* See also *City of Montreal and Walker*, M. L. R. 1 Q. B. 469. The same words in different statutes may have different meanings—broad or narrow, according to the subject matter of legislation and general context. It has been held that a statute authorizing a municipality to pass laws for the good government of a city, does not authorize a by-law requiring the proprietor of a circus, theatre or other exhibition licensed by the corporation to pay a police officer $2 for each night's attendance upon such place of amusement for the purpose of enforcing order. *Waters* v. *Leech*, 3 Ark. 110. As to what is a place of entertainment, see *Taylor* v. *Orram*, 1 H. & C. 370; *Muir* v. *Keay*, L. R. 10 Q. B. 594.

Exhibitions, etc.

26. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys and other places of amusement; (*b*) 46 V. c. 18, s. 490 (32).

Trees.

Encouraging planting of certain trees, etc.

27. For allowing to any person who plants fruit trees, or trees, shrubs or saplings, suitable for affording shade on any highway within the municipality, (*c*) in abatement of statute labour or out of the general fund, a sum of not less than twenty-five cents for every tree so planted; *See* Rev. Stat. c. 201.

Injuries to Property and Notices.

Ornamental trees.

28. For preventing the injuring or destroying of trees or shrubs planted or preserved for shade or ornament (*d*) and

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(*b*) Under a power to make "by-laws relative to *nuisances* generally" it was held that a by-law might be passed prohibiting the keeping in any manner whatever of a bowling alley for gain or hire. *Tanner* v. *Albion*, 5 Hill (N.Y.) 121; *Updyke* v. *Campbell*, 4 E. D. Smith (N.Y.) 570. But this is contrary to *The People* v. *Sergeant*, 8 Cow. (N.Y.) 139. See also *Jackson* v. *People*, 9 Mich. 111; *Smith* v. *Madison*, 7 Ind. 86. It has been held that a ten pin alley is not *per se* a nuisance. *State* v. *Hull*, 32 N. J. 158. When the corporation was empowered to determine whether bowling alleys should be allowed, and if so under what restrictions a by-law requiring them to be closed at a certain hour was held valid. *State* v. *Hay*, 29 Maine 457. See also *State* v. *Freeman*, 38 N. H. 426. A skating rink with music is a place of amusement. *Reg.* v. *Tucker*, 2 Q. B. D. 417. See further note *a* to sub-s. 25.

(*c*) The policy of the municipal law is to encourage the planting of trees on public highways. See Rev. Stat. c. 201. Shade trees planted by a land-owner between a carrriage path and a sidewalk are not to be deemed a nuisance. *Graves* v. *Shattuck*, 35 N. H. 258.

(*d*) It was held in the United States—under a general power "to ordain such laws, not inconsistent with the constitution and laws of the State, *as shall be needful to the good of the city*"—that the city had power to pass a by-law imposing a penalty upon any person who should *mutilate* or *destroy* any ornamental tree planted in the streets, lanes or other public places of the city. *State* v. *Merrill*, 37 Maine 329. Whatever doubt there might be as to the power under a statute so general as that quoted, there can be none under this sub-section which is "for *preventing* the *injuring* or *destroying*" of trees or shrubs planted or preserved for shade or ornament. In order to sustain a charge under such a by-law, it would not be necessary to show that the injury or destruction was either wanton or malicious. If any person unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining

the defacing of private or other property by printed or other notices; (*e*)

29. For preventing the pulling down or defacing of sign-boards, (*f*) or of printed or written notices lawfully affixed; Signs.

Gas and Water Companies.

30. For authorizing any corporate gas or water company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, (*g*) subject to such regulations as the council sees fit; Authorizing gas and water companies to lay down pipes, etc.

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or belonging to any dwelling house, &c., he is guilty of felony. R. S. C. c. 168, s. 22; see further sub-s. 20 of sec. 479.

(*e*) No one has a right to injure the property of another with a view to gain or otherwise. Posting up placards against house walls, &c., may be a defacement thereof, and so a legal injury.

(*f*) Persons tearing down or defacing signs are liable to be proceeded against as vagrants. See R. S. C. c. 157, s. 8 (*h*).

(*g*) In general, the sanction of the Legislature, or of some municipal authority having the power to confer it, is necessary to authorize the laying down of gas pipes under streets or public squares. *Ellis* v. *Sheffield Gas Co.*, 23 L. J. Q. B. 42; *Reg.* v. *Longton Gas Co.*, 2 E. & E. 651; see also *Reg.* v. *Charlesworth*, 16 Q. B. 1012; *Reg.* v. *Train*, 9 Cox C. C. 180; *Thompson* v. *Sunderland Gas Co.*, 2 Ex. D. 429; *Boston* v. *Richardson*, 13 Allen (Mass.) 146, 160; *State* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Milhau* v. *Sharp*, 15 Barb. (N.Y.) 193; *Smith* v. *Metropolitan Gas Co.*, 12 How. Pr. (N.Y.) 187; *People* v. *Benson*, 30 Barb. (N.Y.) 24; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19. As to liability for injury caused by laying down pipes. See *Scott* v. *Manchester*, 2 H. & N. 204. The laying down of water pipes of course stands on the same footing. *Milhau* v. *Sharp*, 15 Barb. (N.Y.) 210; *Kelsey* v. *King*, 32 Barb. (N.Y.) 410; *Commissioners* v. *Hudson*, 2 Beas. (N.J.) 420. An agreement between a highway board and a gas company, that if the former would give the latter a license to open a certain public highway the latter would make good the expense of the road, and pay one shilling per yard for so much of the highway as opened, is a valid agreement. *Edgeware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92. A county council has no power, in the absence of express legislation authorizing it, to grant the exclusive right or monopoly, either as to gas or water, to any one company or person. *Ohio* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19; *People* v. *Benson*, 30 Barb. (N.Y.) 24. A gas or water company is not, in the absence of express statute or contract, bound to furnish gas or water to all buildings on the lines of their main pipes, although compensation for so doing be tendered. *Patterson Gaslight Co.* v. *Brady*, 3 Dutch (N.J.) 245. (See, as to the duty of municipal corporations, sec. 480, sub-s. 3.) In the absence of proof of negligence, such a company is not liable for the escape of gas or water. *Blyth* v. *Birmingham Water Co.*, 11 Ex. 781.

Taking stock in gas and water companies.

Proviso.

Head of corporation to be a director in certain cases.

31. For acquiring stock in, or lending money to, such company; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by the company; provided the by-law is consented to by the electors, as hereinbefore provided. In such case the head of any corporation holding stock in such company to the amount of $10,000 shall be *ex officio* a director of the company in addition to the other directors thereof, (*h*) and shall also be entitled to vote on such stock at any election of directors;

Giving Intoxicating Liquors to Minors, etc.

Sale of Intoxicating drink to children etc

32. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master, or legal protector; (*i*)

Public Morals.

Indecent placards, etc

33. For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places; (*j*)

(*h*) Although the municipal corporation may either acquire stock, lend money, or guarantee money borrowed by a gas or water company, it is only when it acquires stock to the amount of at least $10,000 that the head of the corporation becomes an *ex-officio* director

(*i*) The by-law may be passed to prevent the *sale* or *gift* of intoxicating drink to the classes mentioned, unless under the circumstances directed, and not otherwise. It was held that a municipal corporation, in the absence of express legislation, had no power to pass such a by-law. *In re Barclay and Darlington*, 12 U. C. Q. B. 86. But express provision was afterwards made on the subject. See *In re Ross and York and Peel*, 14 U. C. C. P. 171; *In re Brodie and The Town of Bowmanville*, 38 U. C. Q. B. 580; *In re Arkell and The Town of St. Thomas*, *Ib.* 594. Though idiots and insane persons are not mentioned in the section, a by-law preventing sales to such persons would not be bad. So long as such a by-law is not repugnant to the laws of the Province or of the Dominion, there would appear to be no objection to it. *Ib.* See *In re Ross and York and Peel*, 14 U. C. C. P. 174. See also Rev. Stat. c. 194, s. 76.

(*j*) It is a misdemeanor to procure indecent prints with intent to publish them. *Dugdale* v. *Reg.*, 1 E. & B. 435. But to preserve and keep them in possession is no offence. *Ib.* The sale of an obscene print to a person in private—he having in the first instance requested that such prints should be shown to him, his object being to prosecute the seller—is a sufficient publication to sustain the charge. *Reg.* v. *Carlile*, 1 Cox C. C. 229. Where under a village by-law a conviction was made for writing and posting up an indecent placard, and the

34. For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency ; (*k*) Vice, drunkenness, etc.

35. For suppressing disorderly houses and houses of ill-fame ; (*l*) Lewdness.

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placard was a criminal libel it was considered doubtful by Cameron, J., whether the municipality could thus make a new offence and award a new or additional punishment for what was already a criminal offence. *McLellan* v. *McKinnon*, 1 O. R. 219.

(*k*) Collecting crowds in the streets by using violent and indecent language to passers by, thereby obstructing their free passage, is an indictable nuisance. *Barker* v. *Commonwealth*, 19 Pa. St. 412.

(*l*) There is no power to license bawdy houses. *State* v. *Clarke*, 14 Am. 471. Power to make by-laws relative to nuisances has been held to confer authority to impose penalties on bawdy houses, and on persons owning houses used, with their knowledge, for such purposes. *McAlister* v. *Clark*, 33 Conn. 91 ; see also *Ely* v. *Supervisors*, 36 N. Y. 297 ; *Shafer* v. *Mumma*, 17 Md. 331. Here the power conferred is to make by-laws for "*suppressing* disorderly houses and houses of ill-fame." This, by implication, confers the right to use means necessary to that end. *Childress* v. *Mayor, &c.*, 3 Sneed (Tenn.) 347. Forbidding owners of houses from letting or renting for such a purpose is lawful. *Ib.* But though destruction of the house would be a means of suppressing it, it would seem that power to demolish is not to be inferred from the power to suppress. *Welch* v. *Stowell*, 2 Doug. (Mich.) 332. The *building* in which a particular trade is carried on, or the *house* which may be kept in a disorderly manner or used for unlawful purposes, is not *per se* a nuisance. It is the misuse or abuse of it that constitutes the nuisance. *Burditt* v. *Swenson*, 17 Texas 489 ; *Dargan* v. *Waddell*, 9 Ire. Law (N. Car.) 244. The property in the tenement is therefore protected against destruction. *Miller* v. *Burch*, 32 Texas 208 ; *S. C.* 5 Am. 242 ; *Welch* v. *Stowell*, 2 Doug. (Mich.) 333 ; see also *Ely* v. *Supervisors*, 36 N. Y. 297 ; *Clark* v. *Syracuse*, 13 Barb. (N. Y.) 32. In prosecutions for keeping bawdy houses, evidence may be given as to the common reputation of the defendants. *State* v. *McDowell*, Dudley (S. C.) 346. Where defendants, as master and mistress, resided in a house to which men and women resorted for the purpose of prostitution, but no indecency or disorderly conduct was perceptible from the exterior of the house, it was held, notwithstanding, that defendants were rightly convicted of keeping a house of ill-fame. *Reg.* v. *Rice*, L. R. 1 C. C. 21. A conviction, for that the defendant did on &c., in the city of Toronto keep a common disorderly bawdy house on Queen street, in the same city, a place of resort for both men and women of lewd character for the purposes of prostitution was held to be sufficient. *Reg.* v. *Munro*, 22 U. C. Q. B. 44. But a conviction under Dominion Act, 32 & 33 Vict. cap. 28 (now R. S. C. c. 157,) for that defendant was in the night-time on the 24th February, 1870, a common prostitute, wandering on the public streets of Ottawa, and not giving a satisfactory account of herself, contrary to the statute, was held bad for not

Gaming.

36. For suppressing gambling houses, (*n*) and for seizing and destroying faro-banks, rouge et noir, roulette tables, and other devices for gambling found therein ; (*o*)

Racing.

37. For preventing horse racing ; (*p*)

Vagrants.

38. For restraining and punishing vagrants, mendicants, and persons found drunk or disorderly in any street, highway or public place ; (*q*)

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shewing sufficiently that she was asked before, or at the time of being taken to give an account of herself, and did not satisfactorily do so. *Reg.* v. *Levecque*, 30 U. C. Q. B. 509 ; see further *Reg.* v. *Smith*, 35 U. C. Q. B. 518.

(*n*) All common gaming houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and entice numbers of persons to idleness, whose time might be otherwise employed for the good of the community. 1 Hawk. P. C. cap. 32, s. 4. See further *Mississippi Society of Arts* v. *Musgrove*, 7 Am. 723 ; *Moore* v. *The State*, 12 Am. 367 ; *Bosley* v. *Davies*, 1 Q. B. D. 84 ; *Brodie and Bowmanville*, 38 U. C. Q. B. 580 ; *State* v. *Book*, 20 Am. 609.

(*o*) As to the power to *seize* and *destroy* private property, when necessary in the public interest, see note *g* to sub-s. 21 of sec. 479.

(*p*) The power is to *prevent* horse-racing. A former municipal Act was to "prevent or regulate." Horse-racing is not under all circumstances illegal. Oliphant on Horses, 3rd ed. 412. No person is, however, permitted by the law to run a horse at a race unless it is his own, nor to enter more than one horse for the same "plate," upon pain of forfeiting the horses. 13 Geo. II. cap. 19. sec. 1. No party can recover a wager on a horse race that is illegal within the statute. *Sheldon* v. *Law*, 3 U. C. Q. B. O. S. 85. The proprietor of a race-course is not responsible for the "purse," unless upon clear proof of an express understanding to that effect. *Gates* v. *Tinning*, 3 U. C. Q. B. 295. Nor has the winner a right to recover back his "entrance money," because the purse has not been paid over to him. *Ib.* See fusther, *Sims* v. *Denison*, 28 U. C. Q. B. 323.

(*q*) Notwithstanding there be provision by the general law against vagrants, R. S. C., c. 157, it is still in the power of a municipal corporation to make local laws to restrain them, provided the local law be not repugnant to the general law. *St. Louis* v. *Bentz*, 11 Mo. 61. See also, *State* v. *Cowan*, 29 Mo. 330 ; *Byers* v. *Commonwealth*, 42 Pen. St. 89 ; *Shafer* v. *Mumma*, 17 Md. 331. The ancient statutes contain very severe regulations as to vagrants. 22 Hen VIII. cap. 12 ; 27 Hen. VIII. cap. 25 ; 1 Edw. VI. cap. 3 ; 3 & 4 Edw. VI. cap. 16 ; 14 Eliz. cap. 5 ; 18 Eliz. cap. 3 ; 35 Eliz. cap, 7 ; 13 & 14 Car. II. cap. 12, sec. 23 ; 12 Anne st. II. cap. 23 ; 13 Geo. II. cap. 24 ; 17 Geo. II. c. 5. The last mentioned Act, (17 Geo. II. c. 5), divides vagrants into three classes: first, idle and disorderly persons ; second, rogues and vagabonds ; and, third, incorrigible rogues. See as to evidence required to justify the conviction of persons as vagrants.

39. For preventing indecent public exposure of the person and other indecent exhibitions; (*r*) Indecent exposure.

40. For preventing or regulating the bathing or washing the person in any public water in or near the municipality; (*s*) 46 V. c. 18, s. 490 (23-31, 33-37). Bathing.

Nuisances.

41. For preventing and abating public nuisances; (*t*) Nuisances.

Reg. v. *Levecque*, 30 U. C. Q. B. 509; *Reg.* v. *Bassett*, 10 P. R. 386; *Reg.* v. *Organ*, 11 P. R. 497. It is not an offence for a person to get drunk in his own premises. See *Reg.* v. *Blakeley*, 6 P. R. 244; *Lester* v. *Torrens*, 2 Q. B. D. 403; *Warden* v. *Tye*, 2 C. P. D. 74; see further *In re Livingstone*, 6 P. R. 71.

(*r*) The power is to prevent indecent *public* exposure of the person and *other* indecent exhibitions. In order to render a person liable to an indictment for indecently exposing his person in a public place, it is not necessary that the exposure should be made in a place open to the public. *Reg.* v. *Thallman*, 9 Cox C. C. 388; 9 L. T. N. S. 425. If the act is done where a great number of persons may be offended by it, and several see it, it is sufficient. *Ib.* A public place is one where the public go, no matter whether they have a right to go or not. *Reg.* v. *Wellard*, 14 Q. B. D. 63. It seems that the offence may be indictable if committed before divers subjects of the realm, even if the place be not public. *Ib.* If the indictment, however, charge the offence to have been committed *on* a highway, such an indictment will not be sustained by evidence that the offence was committed in a place *near* the highway, though in full view of it. *Reg.* v. *Farrell*, 9 Cox. C. C. 446. An indecent exposure in a place of public resort, if actually seen by only one person, no other person being in a position to see it, is not an indictable offence. *Reg.* v. *Webb*, 1 Denn. C. C. 338; *Reg.* v. *Watson*, 2 Cox. C. C. 376: *Reg.* v. *Farrell*, 9 Cox. C. C. 446. A party was indicted for an indecent exposure in an omnibus, several passengers being therein. *Held*, a public place. *Reg.* v. *Holmes*, 3 C. & K. 360. But a urinal, with boxes or divisions for the convenience of the public, though situated in an open market, was held not to be a public place within the meaning of the allegation. *Reg.* v. *Orchard*, 3 Cox. C. C. 248. Keeping a booth in a public place containing an indecent exhibition for hire, is an indictable offence. *Reg.* v. *Saunders*, 1 Q. B. D. 15.

(*s*) Whatever place becomes the abode of civilized men, there the laws of decency must be enforced. *Reg.* v. *Crunden*, 2 Camp. 89. Bathing in the sea on the beach near inhabited houses, from which the person may be distinctly seen, is an indictable offence, although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place. *Ib.*

(*t*) The power is to *prevent* and *abate* public nuisances. In addition to the powers given by this Act, the Public Health Act, Rev. Stat. c. 205, contains provisions for the prevention and suppression of nuisances. In drawing by-laws under this and the following

sub-sections regard should be had to that Act, and amendments should be made to schedule A thereto when necessary. This Act does not authorize the suppression of a nuisance so called which is not in itself unlawful, *e. g.*, the prevention of persons called runners or guides from exercising their calling in a town. *Re Davis and Clifton*, 8 U. C. C. P. 236. The nuisances intended are of two kinds: public or common nuisances, which affect people generally, and private nuisances, which may be defined as anything done to the hurt of the lands, tenements or hereditaments of another. Russell on Crimes, 4th Ed. 435. That which affects only three or four persons is a private and not a public nuisance. *Rex* v. *Lloyd*, 4 Esp. 200. The mere declaration by a city council that a structure is a public nuisance does not make it so, unless it in fact have that character. See *Dillon* on Municipal Corporations, 3rd ed., sec. 374. The term "nuisance" is well understood, and means literally annoyance—anything that worketh hurt. *Rex* v. *White*, 1 Burr. 333; *Rex* v. *Davey*, 5 Esp. 217. It is not necessary to constitute a nuisance to shew that the smell, &c., produced should be unwholesome. It is enough if it renders the enjoyment of life and property uncomfortable. *Per* Lord Mansfield, in *Rex* v. *White*, 1 Burr. 337. See also *Rex* v. *Neill*, 2 C. & P. 485; *State* v. *Rankin*, 16 Am. 737; *St. Helen's Chemical Co.* v. *Corporation of St. Helen's*, 1 Ex. D. 196; *Campbell* v. *Seaman*, 20 Am. 567. "If there be smells offensive to the senses, that is enough, as the neighbourhood has a right to fresh and pure air." *Per* Abbott, C. J., *Rex* v. *Neill*, 2 C. & P. 485. "The only question therefore, is, is the business (slaughter house), as carried on by the defendant, productive of smells to persons passing along the public highway." *Ib.* A by-law providing "that no person shall keep a slaughter house within the city without a special resolution of the council" is bad, tending to create a monopoly. *In re Nash and McCracken*, 33 U. C. Q. B. 181. So a by-law imposing a fine upon every person "who shall keep or suffer to be kept, any swine within the said borough from 1st February to 31st October inclusive, in any year. *Everett* v. *Grapes*, 3 L. T. N. S. 669. A resolution of council or license from the corporation is no defence to a prosecution for a public nuisance. *Rex* v. *Cross*, 2 C. & P. 483. "If the defendant's slaughtering house was so conducted as to be a public nuisance at common law, the parish might at any time have caused it to be removed; and I am clearly of opinion that in this case it was so conducted as to be a nuisance at common law, and that the defendant would not have been and is not entitled to any compensation." *Per* Abbott, C. J., in *Rex* v. *Watts*, 2 C. & P. 486, 488. It was in this case proved that smells proceeded from the slaughter house which was a great nuisance to persons passing along the public highway. *Ib.* If a certain noxious trade is already established in a place remote from habitation and public roads, and persons afterwards come and build houses within reach of its noxious effects, or if a public road be made so near to it that the carrying on of the trade becomes a nuisance to the persons using the road, in those cases the party would be entitled to continue his trade, because his trade was legal before the erection of the houses in the one case, and the making of the road in the other. *Per* Abbott, C. J., in *Rex* v. *Cross*, 2 C. & P. 484. But if the man so situated increase the

nuisance by the manner or extent to which he carries on the trade, he is liable to indictment. *Rex* v. *Watts*, M. & M. 281; *Rex* v. *Neville*, 1 Peake, 92. In countries, however, where great works are carried on, which are the means of developing national wealth persons must not stand on extreme rights. *Bamford* v. *Turnley*, 3 B. & S. 62-66; *Tipping* v. *St. Helen's Smelting Co.*, 4 B. & S. 608; 11 H. L. Cas. 642; *Gaunt* v. *Fynney*, L. R. 8 Chy. 8; *Harrison* v. *Good*, L. R. 11 Eq. 338; *Salvin* v. *North Branchepeth Canal Co.*, L. R. 9 Chy. 705; *Ball* v. *Ray*, L. R. 8 Chy. 467; *Broder* v. *Saillard*, 2 Ch. D. 692; *Adams* v. *Michael*, 17 Am. 516. The power to abate a public nuisance is a portion of police authority necessarily vested in the corporations of all public towns. *Per* Buchanan, J., in *Kennedy* v. *Phelps*, 10 La. An. 227; see also *Gregory* v. *Railroad Co.*, 40 N. Y. 273. But a private individual cannot justify damaging the property of another on the ground that it is a public nuisance unless it do him a special and particular injury. *Dimes* v. *Petley*, 15 Q. B. 276; *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96; *Mayor, &c. of Scarborough* v. *Rural Sanitary Authority of Scarborough*, 1 Ex. D. 344; *State* v. *Parrott*, 17 Am. 5. A distinction must be drawn between a house which is a nuisance *per se*, and one that is only a nuisance by reason of its use or abuse. In the latter case there is no legal right to destroy the property. See note *l* to sub-s. 35. In several parts of England public slaughter houses are established, under a provision that "no person shall slaughter any cattle or dress any carcass for sale as food for man, in any place within the limits other than a slaughter house." It was held that the enactment only applied to the slaughtering of beasts intended by the person slaughtering the same for sale for human food. *Elias* v. *Nightingale*, 8 E. & B. 698; see further, *Anthony* v. *Brecon Markets Co.*, L. R. 2 Ex. 167; reversed, L. R. 7 Ex. 399. See also the Public Health Act, Rev. Stat. c. 205. An indictment will lie for a public nuisance; but not for a private nuisance. *Rex* v. *Atkins*, 3 Burr. 1706. That which is not of public concern is a mere civil injury. *Rex* v. *Storr*, 3 Burr. 1698; *Rex* v. *Johnson*, 1 Wils. 325. The non-repair of a private road, even by a public body, is not indictable. *Rex* v. *Richards*, 8 T. R. 634; *Rex* v. *Trafford*, 1 B. & Ad. 874. The writ *quod permittat* lay at common law to prostrate a public nuisance. *Palmer* v. *Poultney*, 2 Salk. 458; and after judgment on an indictment for a nuisance, a writ of prostration may still be issued. *Rex* v. *Newdigate*, Comb. 10; *Houghton's Case*, Sir T. Boyd, 215; Vin. Abr. "Nuisance," A. *Ib.* "Chemin;" Fitz. Nat. Brev. 124; *Reg.* v. *Haynes*, 7 Ir. L. R. 2. An action on the case will lie for the continuance of a nuisance after recovery for its erection. *Rosewell* v. *Prior*, 1 Salk. 460. Though an indictment for a nuisance is in form a criminal, it is in substance a civil proceeding remedial in its object. *Rex* v. *Sadler*, 4 C. & P. 218; *Holmes* v. *Wilson*, 10 A. & E. 503; *In re Douglass*, 3 Q. B. 825; *Thompson* v. *Gibson*, 7 M. & W. 456; *Reg.* v. *Chorley*, 12 Q. B. 515; *Rex* v. *Russell*, 3 E. & B. 942; *Reg.* v. *Loughton*, 3 Smith, 575; *Reg.* v. *Lincomb*, 2 Chit. 214. Upon an indictment for a continuing nuisance—such as a wall across a highway—the proper judgment is, that it be abated. *Rex* v. *Stead*, 8 T. R. 142; *Rex* v. *Yorkshire*, 7 T. R. 467; and when the Court is satisfied before judgment that a nuisance has

By-laws for cleansing wells, etc.

42. For establishing, protecting, regulating and cleansing public and private wells, reservoirs and other public and private conveniences for the supply of water, and for closing public and private wells; for preventing the fouling of the same and the wasting of water therein or therefrom; for procuring an analysis of such water, and providing for the payment of the expense thereof, and for making reasonable charges for the use of public water; (*u*)

Closing and filling up cesspools, etc.

43. For compelling the owners, lessees and occupants of real property within any defined area to fill up or close any wells water-closets, privies, privy-vaults, or cesspools the continuance of which may, in the judgment of the council, be dangerous to health; (*v*)

Slaughter-houses, gas-

44. For preventing or regulating the erection or continu-

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been abated, the judgment need not be pronounced. *Rex* v. *Incledon*, 13 East. 164; *Reg.* v. *Paget*, 3 F. & F. 29. The practice followed is to respite judgment until it be seen whether or not the nuisance is abated, and if not to inflict a heavy fine to compel the abatement. *Ib.* There may be an indictment for the continuance of a nuisance. *Reg.* v. *Maybury*, 4 F. & F. 90, and in such a case the former judgment is conclusive that the *locus in quo* was a highway, and that the erection upon it was a nuisance. *Ib.* This being so, upon proof of the continuance of the nuisance, the jury must find the defendant guilty. *Ib.* See further, *Reg.* v. *Jackson*, 40 U. C. Q. B. 290. The defendant is not liable to costs where the indictment is removed into Court by the prosecutors. *Ib.* In such a case, however, the Court after imposing a fine, ordered that one-third of the fine should go to the prosecutors, and suggested that the government might, on application, order the remaining two-thirds to be paid to them, the whole fine being less than the amount of costs incurred. *Ib.* Where the defendant removes the indictment and so becomes liable to pay costs in the event of conviction, the Court, upon being satisfied that the nuisance has been abated, may impose a nominal fine only. *Reg.* v. *Cooper*, 40 U. C. Q. B. 294.

(*u*) A corporation was empowered by statute to erect a reservoir near a river, and on completion to divert the waters of the river discharging down the river seventy-five cubic feet of water per second for twelve hours of every working day. The corporation began, but was prevented by the nature of the ground from completing the reservoir. They diverted the waters, and discharged down the river more than its natural flow, but less than the quantity required by the statute. *Held*, that riparian proprietors could at common law recover for any damage sustained by the diversion of the waters, but could not recover for failure to comply with the statutory requirement. *Waller* v. *Manchester*, 6 H. & N. 667.

(*v*) See *In re Mackenzie and the City of Brantford*, 4 O. R. 382. See further sub-secs. 47-49 and notes thereto. See also the Public Health Act, Rev. Stat. c. 205.

ance of slaughter houses, gas works, tanneries, distilleries, or other manufactories or trades which may prove to be nuisances; (*w*) works, distilleries, etc.

45. For preventing or regulating the keeping of cows, goats, pigs and other animals, and defining limits within which the same may be kept; (*x*) Limits in which animals may be kept.

46. For regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noises, or noises calculated to disturb the inhabitants; (*y*) Ringing of bells, etc.

(*w*) There is no doubt that certain manufactories or trades may be public nuisances. The difficulty is to define them. Much depends upon location, use, and other surrounding circumstances. *Aldrich* v. *Howard*, 7 Rh. Is. 87; *Tipping* v. *St. Helen's Smelting Co.*, 4 B. & S. 608. Slaughter houses, *Rex* v. *Watts*, 2 C. & P. 486; *Elias* v. *Nightingale*, 8 E. & B. 698; *Anthony* v. *Brecon Markets Co.*, L. R. 2 Ex. 167; L. R. 7 Ex. 379; *Dubois* v. *Budlong*, 10 Bow. (N. Y.) 700; gas works, *Cleveland* v. *Gas Light Co.*, 20 N. J. Eq. 201; tanneries and distilleries are here instanced. To these may be added in populous places a pig-sty, *Commissioners* v. *Van Sickle*, Bright (Pa.) 69; brick-making, *Wanstead* v. *Hill*, 13 C. B. N. S. 479; *Bamford* v. *Turnley*, 3 B. & S. 62; a planing mill, *Rhodes* v. *Dunbar*, 57 Pa. St. 274; powder house, *Cheatham* v. *Shearn*, 1 Swan. (Tenn.) 213; *Durnesnil* v. *Dupont*, 18 B. Mon. (Ky.) 800; a dangerous building, *Nolin* v. *Major*, 4 Yerg. (Tenn.) 163; *Harvey* v. *Dewoody*, 18 Ark. 252; spirit of sulphur and oil of vitriol works, *Rex* v. *White*, 1 Burr. 333. A by-law declaring that "no person shall keep a slaughter house within the city without the special resolution of the council," was held to be void, because it permitted favouritism by the council, and might be used in restraint of trade or used to grant a monopoly. *In re Nash and McCraken*, 33 U. C. Q. B. 181; but see *Inhabitants of Watertown* v. *Mayo*, 12 Am. 694; see further, *Hughes* v. *Trew*, 36 L. T. N. S. 585. See also Rev. Stat. c. 205, s. 54 *et seq.*, and ss. 104, 105. See further, note *t* to sub-s. 41.

(*x*) A by-law providing that "no person shall keep nor shall there be kept within the city of Toronto any pigs or swine or any piggery." was held to be bad as being a general prohibition, and not restricted to cases that might prove to be nuisances. *McKnight* v. *Toronto*, 3 O. R. 284. The by-law provided that no cows should be kept in any stable situate less than 40 feet from the nearest house, or less than 80 feet where two cows were kept, and this was held unobjectionable. *Semble*, that the by-law was not bad, in being so generally expressed, that it would restrict the owner from keeping cows within the prescribed distances. *Ib.* See also *Re Kiely*, 13 O. R. 451.

(*y*) Ringing of bells, blowing of horns, and other *unusual*, noises, are here treated as nuisances. They may or may not be nuisances, according to circumstances. It is in the power, however, of the corporation at any time to treat all such noises, when in streets and

Sewerage and Drainage.

Construction of cellars, drains, etc.

47. For regulating the construction of cellars, sinks, cesspools, water-closets, earth closets, privies and privy vaults, and for compelling and regulating the manner of draining, cleaning, clearing, and disposing of the contents of the same ; (*z*)

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public places, as nuisances, and prevent them. It is difficult to describe, though easy to imagine such "an unusual noise" as would be be a nuisance. Some examples may, however, be given. The noise of a tinsmith in carrying on his trade, if in a neighbourhood where there is a number of offices, and if sufficient to prevent the occupants from following their lawful business, will, if it affect any considerable number of inhabitants, be deemed a public nuisance. *Rex* v. *Lloyd*, 4 Esp. 200. Knocking at a door or ringing a door-bell at night, where the noise is so great as to disturb not only the owner of the house and his family, but his neighbours may be "wilful and wanton" within the meaning of Eng. Stat. 10 & 11 Vict. cap. 89, s. 28, although the man who was guilty of it had been instructed to deliver papers at the house. *Clark* v. *Hoggins*, 11 C. B. N. S. 544. A circus, the performances in which were to be carried on for eight weeks near the plaintiff's house, and took place every evening, lasted from about half-past seven till half-past ten o'clock. The noise of the music and shouting could be distinctly heard all over the house, and was so loud that it could be heard above the conversation in the dining-room, though the windows and shutters were closed. This was held to be a nuisance. *Inchbald* v. *Robinson*, L. R. 4 Chy. 388. If a man builds a rolling mill close to inhabited cottages, so that the vibration produced by the hammers cracks the walls of the cottages, and the noise of the mill causes them to become and remain uninhabited, the mill will be a nuisance. *Scott* v. *Frith*, 4 F. & F. 349 ; 10 L. T. N. S. 240. See also *Hathaway* v. *Doig*, 28 Grant. 461 ; 6 A. R. 264. Where the council of a borough under sec. 23 of the Municipal corporations Act, 1883 (45 and 46 V. c. 50, Imp.) provided that no person not being a member of Her Majesty's Army or Auxiliary Forces, acting under the orders of his commanding officer should sound or play upon any musical instrument in any of the streets of the borough, on Sunday, it was held that the by-law was unreasonable and *ultra vires*, and therefore void. *Johnson* v. *Mayor of Croyden*, 16 Q. B. D. 708. A by-law of the city of London prohibiting the beating of drums, &c., was held invalid so far as it sought to prohibit the beating of drums simply without evidence of the noise being unusual or calculated to disturb. *Reg.* v. *Nunn*, 10 P. R. 395. See also *Reg.* v. *Martin*, 12 O. R. 800.

(*z*) It was held, under 18 & 19 Vict. c. 120, that the Metropolitan District Board of Works had no power to lay down any general or arbitrary rule, requiring *all* owners or occupiers of houses situate within its district to convert privies into water-closets. *Tinkler* v. *Wandsworth District Board of Works*, 2 De G. & J. 261 ; 4 Jur. N. S. 293. "The question is not whether they have power to cause or order privies within their district to be put in a proper and decent state, if not in that state, but it is whether they have the right or power to force on the plaintiff the mechanical contrivance of water-

48. For compelling or regulating the filling up, draining, cleaning, clearing, altering, relaying or repairing of any grounds, yards, vacant lots and private drains; (*a*) Filling up, draining, etc., grounds, yards, etc.

49. For making any other regulations for sewerage or drainage that may be deemed necessary for sanitary purposes; (*b*) Regulations for sewerage, etc.

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closets, with their requisite apparatus, for which he is to find water supply as best he may, instead of the privies which, sufficient as privies if kept in a condition proper for such conveniences, are upon his land for the purposes of his cottages there. The claim of the defendants in that respect appears to me manifestly groundless." *Per* Knight Bruce, L. J., *Ib.* 294. But an order may be made for the conversion of an insufficient privy into a water-closet. *St. Lukes* v. *Lewis*, 1 B. & S. 864. The Court will not interfere by injunction to prevent a municipal corporation exercising *bona fide* the powers conferred upon it by the Legislature—for example, in this case, the erection of a urinal. *Biddulph* v. *St. George's, Hanover Square*, 9 Jur. N. S. 434, reversed, *Ib.* 953. The cleansing of cellars, sinks, water-closets, privies, privy vaults, &c., is *prima facie* the duty of the occupant. *Russell* v. *Shenton*, 3 Q. B. 449. If the privy be in such a condition at the time of the letting as to be a nuisance, both owner and tenant are liable to be prosecuted; but if it become in such a condition after the letting, the tenant or occupant only is responsible. *Reg.* v. *Osler*, 32 U. C. Q. B. 324. An agent merely to receive rent is not liable to be prosecuted in respect of any such nuisance. *Ib*: see further, *Peck* v. *Waterloo and Seaforth Local Board of Health*, 9 L. T. N. S. 338. If the owner of land on which there is a house, construct on the other part of the land a sewer, and let the house, and afterwards, by reason of the original faulty construction of it and the continued use of it by the owner in the faulty state, the house is injured, the owner is liable to the lessee for keeping and continuing the sewer so constructed. *Alston* v. *Grant*, 3 E. & B. 128. See also the Public Health Act, Rev. Stat. c. 205.

(*a*) A clause of a by-law requiring that "all grounds, yards, vacant lots, *or other properties*, abutting on any street, should be drained," was held valid. *In re McCutchon and Toronto*, 22 U. C. Q. B. 613. The sixth section of a by-law requiring all grounds, &c., not already drained, abutting on any street with a common sewer, to be drained into the same within fourteen days from the advertising of the by-law for one week—the seventh section imposing a penalty on any one of not less that $1 nor more than $10 for each month he should omit to do so—and the eighth providing for enforcing payment by distress, or imprisonment not exceeding thirty-one days, were quashed as illegal. *Ib.* A subsequent by-law added to the eighth section above mentioned a proviso, that any person thereby required to construct a drain who should not do so, but be willing to pay the same rent as if he were using the sewer, should be exempt from penalties, was also quashed. *Ib.*

(*b*) "Sewerage" or "drainage." Sewer, in its general sense, may mean the whole apparatus, and in its specific sense, a drain or part of that apparatus. *Per* Lord Campbell, in *Poplar Board of Works* v.

Inspection of Meat, Milk, etc.

Tainted provisions.

50. For seizing and destroying all tainted and unwhole-

Knight, 1 E. B. & E. 408-429. A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, was held not to be a sewer within the meaning of the English Public Health Act, 1848, 11 & 12 Vic. cap. 63. *Reg.* v. *Godmanchester*, L. R. 1 Q. B. 328. In order to make a municipal corporation liable for damage arising from a defective sewer, evidence must not only be given of negligence on the part of the corporation in the management of the sewer, but it must be shown that they constructed the sewer, or are in some other manner responsible for its maintenance. *Bateman* v. *Hamilton*, 33 U. C. Q. B. 244; *Smith* v. *New York*, 66 N. Y. 295. Mere proof of flooding is not sufficient to establish a prima facie case of negligence. *Noble* v. *Toronto*, 46 U. C. Q. B. 519. If it be shewn that the corporation constructed the sewer, were negligently ignorant of its condition, and in consequence of its defective condition plaintiff's premises were flooded, plaintiff has an action for damages. *Scroggie* v. *Guelph*, 36 U. C. Q. B. 534; *Gilman* v. *Lavonia*, 20 Am. 175. See also *Poll* v. *Indianapolis*, 52 Ind. 547; *Van Egmond* v. *Seaforth*, 6 O. R. 599; *Gray* v. *Dundas*, 11 O. R. 317; 13 A. R. 588. Power to construct a sewer "into, through or under land" is not to be restricted to the construction of sewers under land. *Roderick* v. *Ashton Local Board*, 5 Ch. D. 328. Although a municipality having the power to construct drains and sewers may lawfully cause them to be built so as to discharge their refuse matter into the sea, yet this right must be so exercised as not to create a nuisance, public or private. If a public nuisance is created the public has a remedy by a public prosecution and any individual who suffers special injury therefrom may recover therefor in a private suit for damages. If therefore deposits from sewers constructed by a city cause a peculiar injury to the owners of a wharf or dock by preventing or materially interfering with the approach of vessels and the accustomed and lawful use of the wharf or dock, the city is liable to the latter in damages. *Franklin Wharf Co.* v. *Portland*, 24 Am. Rep. 1; *Brayton* v. *Fall River*, 18 Am. Rep. 470. See also *Gray* v. *Town of Dundas*, 11 O. R. 317; 13 A. R. 588. A municipal corporation passed a by-law for the construction of a sewer without limiting the purpose for which it was to be used, and subsequently passed another by-law regulating how it might be tapped for drainage purposes, and enacting that no one should drain into it without permission from the council first obtained and specifying a certain rate of payment for the use of it when so permitted. The applicant got no leave from the council or any committee thereof to use the sewer, but several members of the council gave him permission to connect some water-closets with it on condition of his paying whenever called upon whatever was reasonable for the privilege. *Held*, that the sewer was constructed for general drainage purposes but that the permission given to the applicant did not bind the council which could compel him to cut off the connection as he had not obtained their consent to make the same, nor paid the rate fixed by the by-law, and that the fact of his having enjoyed the privilege for several years did not place him in any better position than he was at the first. *In re Workman and the Town of Lindsay*, 7 O. R. 425. See note to sec. 496, sub-s. 32.

some meat, poultry, fish, or other articles of food; (*c*) 47 V. c. 32, s. 13 (1-9, 12).

Regulating sales, etc.

51 For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed, subject to the restrictions contained in sections 497-502; 46 V. c. 18, s. 503 (4); 47 V. c. 32, s. 15 (1).

52. For preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to the by-law; 47 V. c. 32, s. 15 (2) 46 V. c. 18, s. 503 (13 *part*). *See* sec. 479 (21).

Inspection of milk and provisions.

53. For appointing inspectors and for providing for the inspection of milk, meat, poultry, fish and other natural products offered for sale for human food or drink, whether on the streets or in public places, or in shops; 47 V. c. 32, s. 13 (10 *part*).

Licensing Milk Dealers.

Licensing milk dealers.

54. For licensing and regulating milk vendors, and for fixing the fee to be paid for such license at a sum not to exceed $1 for one year; 47 V. c. 32, s. 13 (10 *part*).

(*c*) Knowingly to expose for sale in public market meat which is not fit for human food is indictable. *Reg.* v. *Stevenson*, 3 F. & F. 106; so knowingly taking unfit meat to public market for sale. *Reg.* v. *Jarvis*, *Ib.*, 108; but in either event the knowledge of the unfitness of the food is essential to the creation of the offence. *Reg.* v. *Crawley*, *Ib.*, 109: the offence is a nuisance against common law. *Shillito v. Thompson*, 1 Q. B. D. 12; each single act of exposure of tainted meat is a distinct offence. *In re Hartley*, 31 L. J. M. C. 232. A salesman who sells in a public market meat which is afterwards found to be unfit for human food, but which he has no means of knowing or reason to suspect was other than good and wholesome meat, is not liable to an action upon an implied warranty or for money had and received. *Emmerton* v. *Matthews*, 7 H. & N. 586; but a person who sends animals destined for human food to a public market for sale impliedly represents that they are, so far as he knows, not infected with any contagious disease dangerous to animal life. *Ward* v. *Hobbs*, 2 Q. B. D. 331. A condition of sale that they are to be "taken with all faults," does not negative or qualify this representation. *Ib.* It has been held that the city authorities may, under their general powers to regulate markets, require oysters, which have a great tendency to putrefaction, to be sold at certain designated stands and prevent their being sold elsewhere. *Municipality* v. *Cutting*, 4 La. An. 335; *Morano* v. *Mayor*, 2 La. An. 218. But if any meat, poultry, fish or other articles of food become so far tainted as to be unwholesome, express power is given here for the passage of by-laws providing for their seizure and destruction.

Contagious Diseases.

Contagious diseases.

55. For making provision for supplying blanks for the notification and recording of cases of contagious or infectious disease, for giving public notice of houses wherein such cases exist and for taking such measures as by any Act respecting the Public Health or any other Act, are required to be taken in that behalf, and such other measures as may be necessary for preventing the spread of such diseases; (*d*) 46 V. c. 18, s. 496 (13); 47 V. c. 32, s. 13 (11).

Establishing Boundaries.

Regulating boundaries of municipalities.

56. For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the municipality, according to law, in case the same has not been done; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same; (*e*) 46 V. c. 18, s. 490 (38).

Acquiring Land outside the limits for Public Purposes.

Acquiring land outside of municipality.

57. For acquiring and holding, by purchase or otherwise for the public use of the municipality, lands situate outside the limits of such township, city, town or incorporated village; but such lands so acquired shall not form part of the municipality of such township, city, town, or incorporated village, but shall continue and remain as of the municipality where situate; and all by-laws passed by township councils for the purpose of acquiring land as provided by this sub-section, are hereby declared as legal and binding where the by-laws have not been contested or impeached before the 23rd day of April, 1887, as if the lands were within the limits of the municipality the council of which passed the by-law; (*f*)

(*d*) See Rev. Stat. c. 205, s. 72, *et seq.*

(*e*) See note *p* to sec. 14. See also sec. 491.

(*f*) Without express legislative authority municipal councils have no power to acquire lands beyond their local limits. See note *k* to sec. 20. The council of every city, town, township or incorporated village may *pass by-laws* for accepting or purchasing land for public cemeteries, as well within as without the municipality. Sec. 489, sub-s. 11. And *cities* and *towns* may *pass by-laws* for acquiring any estate in landed property within or without the city or town, for an industrial farm or for a public park, garden, or walk, or for a place

Weighing Machines.

58. For erecting and maintaining weighing machines in villages or other convenient places, (*g*) and charging fees for the use thereof, not being contrary to the limitations provided by sub-section 8 of section 497 of this Act; 50 V. c. 29, s. 25. Erecting and maintaining weighing machines.

Pounds, &c.

490. The council of every township, city, town and incorporated village may also pass by-laws (not inconsistent with the Statutes of Canada respecting cruelty to animals,)—(*h*) By-laws may be made for.

1. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the pound-keeper to impound; (*i*) Providing pounds.

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for exhibitions. Sec. 504, sub-s. 8. The limits of the municipality under this section cannot be extended, as the lands acquired "shall not form part of the municipality of such township, city, town, or incorporated village, but shall continue and remain as of the municipality where situate." It differs in this respect from sec. 489, sub-s. 11.

(*g*) This sub-sect. is by 50 V. c. 29, s. 25 expressly added to the present section. If a weighing machine is erected outside of the municipality it is presumed that land for the purpose would have to be acquired under the preceding sub-section.

(*h*) See note *q* to sub-s. 14 of sec. 489.

(*i*) The pound is the custody of the law. *Wolley* v. *Groton*, 2 Cush. (Mass.) 305. The pound-keeper is bound to take and keep whatever is brought to him, at the peril of the persons who bring it. If wrongfully taken, *they* (not he) are answerable. Replevin will not lie against the pound keeper, *Ibbottson* v. *Henry*, 8 O. R. 625. When once the cattle are impounded, the pound keeper cannot let them go without replevin brought against the distrainor, or without the consent of the party impounding. Replevin lies against him who takes, or him who commands the taking; the bailiff who seizes and the party who directs the seizure may both be sued. But the situation of a pound-keeper is not that of a bailiff or servant. He is a public officer, discharging a public duty, and this as much in the keeping as in the receiving. *Wardell* v. *Chisholm*, 9 U. C. C. P. 125; see further, *Clark* v. *Durham*, E. T. 3 Vict. R. & J. Dig., 2866; *Cary* v. *Tate*, 6 U. C. Q. B. O. S. 147; *Isley* v. *Stubbs*, 5 Mass. 280; *Smith* v. *Huntington*, 3 N. H. 76. Being a public officer, discharging a public duty, he is entitled to notice of action under Rev. Stat. cap. 73. *Denison* v. *Cunningham*, 35 U. C. Q. B. 383; *Davis* v. *Williams*, 13 U. C. C. P. 365; *Ibbottson* v. *Henry*, 8 O. R. 625. In the declaration, it must be averred that he acted maliciously and without reasonable or probable cause. *Ib.* The law would be different if the pound-keeper voluntarily parts with the legal

Animals running at large.

2. For restraining and regulating the running at large or trespassing of any animals, and providing for impounding them; and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law; (*j*)

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control of the animals impounded, or impounds them in any other place than prescribed by law. *Bills* v. *Kinson*, 1 Fost. (N. H.) 448. Breach of a pound and liberating an animal therein confined, was held to be no violation of a law prohibiting "any person from opposing or interrupting any city officer in the execution of the ordinances of the city." *Mayor, &c.*, v. *Omburg*, 22 Geo. 67. See also the *Act respecting Pounds*, Rev. Stat. c. 215. See further the following note.

(*j*) This sub-section applies in terms to *all* animals. See note *q* to sub-s. 14 of sec. 489. As to dogs, special provision is made for their destruction when running at large. See sec. 489, sub-s. 15, and notes thereto. The evils to be apprehended from cattle, swine, or poultry running at large are mere injuries to private property, and to the neatness and good order of the city or town. It would not be reasonable to allow the destruction of valuable domestic animals in order to prevent the risk of such injuries. Impounding till the damage is paid, is the natural remedy, which the common law has sanctioned from an early period for an injury to private property; and fine upon the owner seems to answer all the purposes of preventing the public nuisance. Nevertheless, the Legislature may sanction the more vigorous course of allowing a forfeiture and sale of the animal. *Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250. But the power will not be held to exist unless plainly conferred. See *Dillon* on Municipal Corporations, 3rd ed, secs. 150, 348. It is in the power of the corporation to enforce the provisions of the by-law by the imposition of a fine on the owners of the animals running at large. See *Smith* v. *Riorden*, 5 U. C. Q. B. O. S. 647. But if the power had been restricted to the imposition of fines, that would not have given the power to impound, forfeit or sell. *Miles* v. *Chamberlain*, 17 Wis. 446; *Heise* v. *Town Council*, 6 Rich. (S. C.) 404; *Mobile* v. *Yuille*, 3 Ala. 137; *White* v. *Tallman*, 2 Dutch (N.J.) 67. The power to impound and sell, should before it can be legally exercised, be as it is in this section expressly given. *Cotter* v. *Doty*, 5 Ohio, 394; *Kennedy* v. *Sowden*, 1 McMull. (S.C.) 328: but see *Crosby* v. *Warren*, 1 Rich. (S.C.) 385; *McKee* v. *Mckee*, 8 B. Mon. (Ky.) 433. The by-law should provide for notice, either actual or constructive, prior to the sale. See *Dillon* on Municipal Corporations, 3rd ed. secs. 348-351. The powers of sale conferred by the by-law, whatever they may be, should be strictly followed by all concerned in the sale. *Clark* v. *Lewis*, 35 Ill. 417; *Rounds* v. *Stetson*, 45 Maine, 596: *Gilmore* v. *Holt*, 4 Pick. (Mass.) 258; *Rounds* v. *Mansfield*, 38 Maine, 586. Thus a sale made only twenty minutes before the expiration of the time required by law was held illegal. *Smith* v. *Gates*, 21 Pick. (Mass.) 55. Abridgement for any period of the required notice, avoids the sale. *Clark* v. *Lewis*, 35 Ill. 417. Held also that actual knowledge by the owner of the beasts of the impounding thereof,

was not equivalent to the written notice required by a statute. *Coffin* v. *Field*, 7 Cush. (Mass.) 355. Unless there be a legal sale, the pound keeper, may be held to have forfeited the protection of the statute. *Sargeant* v. *Allen*, 29 U. C. Q. B. 384. It has been held that a master is liable for the acts of his farm servant in impounding cattle in his absence the servant acting within the scope of his authority. *Spafford* v. *Hubble*, E. T., 7 Will. IV. R. & J. Dig. 2866. In trespass against two defendants for seizing and taking cattle, one defendant justified as pound-keeper; and because the cattle were in the close of A., wrongfully trespassing in said close and eating grass and corn therein, A took the said cattle and delivered them to the defendant as a pound-keeper within his jurisdiction, and the defendant impounded and afterwards sold them according to law; and the other defendant justified the seizure and the sale by the pound-keeper, as in the other plea, and that the defendant bought the cattle as the highest bidder; to both of which pleas there was a general demurrer. *Held*, that the plea by the pound-keeper was bad, as it did not show that he received the cattle from a person *within his division*, or that the close *was so situate*, and that the plea of the purchaser was good, as he could not be held liable to the plaintiff in trespass. *Clarke* v. *Durham*, E. T., 3 Vict. R. & J. Dig. 2866; *Rourke* v. *Mosey*, 36 U. C. Q. B. 546. In a plea of justification by a pound-keeper for taking a pig, when the justification was that the pig, contrary to township regulations, broke through a lawful fence, it was held necessary to allege that the fence was within that township, and to shew the close in with the pig was trespassing at the time. *Carey* v. *Tate*, 6 U. C. Q. B. O. S. 147. A by-law enacting that certain animals specified shall not run at large, does not impliedly allow others not named to do so, contrary to the common law. *Jack* v. *Ontario, Simcoe, and Huron R. W. Co.*, 14 U. C. Q. B. 328. A by-law enacted that certain named descriptions of animals should not be allowed to run at large, and provided for fixing the height of fences. The plaintiff's cattle having strayed into the lands of the defendant whose fences were not of the required height, it was held that as the by-law did not affirmatively authorize these cattle to run at large, the plaintiff was liable under R. S. O., 1877, c. 195 (now Rev. Stat. c. 215) irrespective of any question as to the height of defendant's fences. *Crowe* v. *Steeper*, 46 U. C. Q. B. 87. A by-law restraining all animals from running at large is not necessarily unreasonable and is within the powers here given. *Re Milloy and Onondaga*, 6 O. R. 573. Sheep grazing upon an open common with the consent of the owner thereof and herded by a boy in charge of them with a view to driving them home are not running at large. *Ibbottson* v. *Henry*, 8 O. R. 625. Defendant seized the plaintiff's oxen damage feasant in his wheat field, but being unable to find a pound-keeper, turned them loose near the plaintiff's gate. On the evening of the same day, the defendant again seized them for doing damage to his meadow and impounded them, giving a statement of his claim for damage to the wheat, but making no claim for injury to the meadow: Held, that the damage to the wheat had been abandoned and that the impounding and sale of the oxen for the damage so claimed were illegal. The plaintiff forbade the sale, when the defendant told the pound-keeper to sell and that he would be responsible:

Appraising the damages.

3. For appraising the damages (*k*) to be paid by the owners of animals impounded for trespassing contrary to the laws of Ontario or of the municipality;

Compensation with respect to impounding animals.

4. For determining the compensation to be allowed for services rendered in carrying out the provisions of any Act, (*a*) with respect to animals impounded or distrained and detained in the possession of the distrainer. 46 V. c. 18, s. 492. *See also Rev. Stat. c.* 215.

lacing landmarks and monuments or marking

491—(1) In case the council of any township, city, town or incorporated village adopts a resolution on the application

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Held, that the defendant and the pound-keeper were both liable. *Buist* v. *McCombe*, 8 A. R. 598.

(*k*) An action of trespass will lie by the owner of a farm into which a neighbour's pigs may break, enter and do damage against the owner of the pigs, unless he can excuse the act for defect of fences or upon some other ground that ought to be specially pleaded. *Blacklock* v. *Millikan*, 3 U. C. C. P. 34. So trespass is maintainable against the owner of a bull which broke into the plaintiff's farm and there killed his mare, though the owner of the bull was not present at the time or aware of the fact. *Mason* v. *Morgan*, 24 U. C. Q. B. 328. If a horse, through the neglect of the owner in not keeping his fences properly repaired, stray out of the field in which it is feeding, into the field of an adjoining proprietor, and there get among his horses and kick one in such a way as to cause his death, such owner is liable in trespass for the injury which his horse has done. *Lee* v. *Riley*, 18 C. B. N. S. 722. So where defendant's horse injured plaintiff's mare, by biting and kicking her through the fence separating the plaintiff's land from the defendant's. *Ellis* v. *Loftus Iron Co.*, L. R. 10 C. P. 10. Whether at common law the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, as in the case of pigs, an ox, or a horse, is doubtful. *Read* v. *Edwards*, 17 C. B. N. S. 245. An action on the case lies against one who keeps a mischievous animal of any kind in respect of any damage done by such animal, where it can be shown that the owner knew of the mischievous propensity of the animal. *Thomas* v. *Morgan*, 2 C. M. & R. 496; *Card* v. *Case*, 5 C. B. 622; *May* v. *Burdett*, 9 Q. B. 101. See further, *Applebee* v. *Percy*, L. R. 9 C. P. 647; *Ward* v. *Brown*, 16 Am. 561. If the owner, upon being told of the mischief done, offers to settle, this is some evidence of his knowledge that the animal was mischievous. *Thomas* v. *Morgan*, 2 C. M. &. R. 496; *Mason* v. *Morgan*, 24 U. C. Q. B. 328. In New Hampshire, if animals are found "doing damage," they may be impounded, and appraisers are to ascertain "whether any damage was done." *Held*, that the statute contemplated *actual* and not merely nominal damages to justify impounding. *Osgood* v. *Green*, 33 N. H. 318.

(*a*) The compensation may be for services rendered with respect to animals impounded or distrained, and detained in the possession of the distrainer. See *Daryan* v. *Davies*, 2 Q. B. D. 118.

of one-half of the resident landholders to be affected thereby, or upon its own motion, that it is expedient to place durable monuments at the front or rear of any concession or range or part thereof in the municipality, or at the front or rear angles of the lots therein, (*b*) the council may apply to the Lieutenant-Governor, in the manner provided for in sections 38, 39 and 40 of *The Act respecting Land Surveyors and the Survey of Lands*, praying him to cause a survey of such concession or range, or such part thereof, to be made, and such monuments to be placed under the authority of the Commissioner of Crown Lands. (*c*)

boundaries of concessions, lots, etc.

Rev. Stat. c. 152, ss. 38 40.

(2) The person or persons making the survey shall accordingly plant stones or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein (as the case may be), and the limits of each lot so ascertained and marked shall be the true limits thereof; (*c*) and the costs of the survey shall be defrayed in the manner prescribed by the said statute. (*d*) 46 V. c. 18, s. 491.

Cost of survey

(*b*) In the absence of such an application and such a resolution as the statute requires to authorize an application to the Governor, the survey would be held unauthorized. *Cooper* v. *Wellbanks*, 14 U. C. C. P. 364. Where it was shewn that the application was made, not by one-half of the resident land-holders to be affected by the survey, but by ten free-holders, over half of whom had no deeds for their lands, and that eleven or twelve freeholders who would be affected by the survey were not parties to the application, the survey was held to be unauthorized. *Ib.* See further, *Reg.* v. *McGregor*, 19 U. C. C. P. 69; *Boley* v. *McLean*, 41 U. C. Q. B. 260.

(*c*) If the survey proceed otherwise than directed by the statute, the survey will be unauthorized. *Tanner* v. *Bissell*, 21 U. C. Q. B. 553; *Boley* v. *McLean*, 41 U. C. Q. B. 260.

(*d*) All expenses incurred in performing any survey or placing any monument or boundary under the provisions of the Rev. Stat. c. 152 must be paid to the person or persons employed in such survey, on the certificate and order of the Commissioner of Crown lands. Sec. 40. The council shall cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred, in order that the same may be levied on the proprietors of the land in proportion to the quantity of land held by them respectively in such concession, in the same manner as any sum required for any other purposes authorized by law may be levied. *Ib.* sec. 38, sub-sec. 5. A by-law to levy the amount "from the patented and leased lands" is bad. *In re Scott and Peterborough*, 25 U. C. Q. B. 453; *In re Scott and Harvey*, 26 U. C. Q. B. 32; *In re Scott and Peterborough*, *Ib.* 36; *Peterborough* v. *Smith*, *Ib.* 40.

Extension of Sewers.

Extension of sewers into adjoining municipality.

492.—(1) In case any township, city, town, or incorporated village shall be so situated that, in the construction of any sewer therein, it becomes necessary, in order to procure an outlet therefor, to extend the same into or through a contiguous municipality, such township, city, town, or incorporated village so situated, shall be permitted and have power, subject as hereinafter provided, to so extend such sewer into or through such contiguous municipality, and shall be permitted and have power to unite and connect the same to any already existing sewer or sewers of such contiguous municipality, upon such terms and conditions as shall be agreed upon between the respective municipalities, and in case of a difference, then upon such terms and conditions as shall be determined by arbitration, under the provisions of this Act in that behalf.

(2) In any case where the council of any municipality shall object to allow an adjoining municipality to connect a sewer with any existing sewer or extend a sewer through its territory, as above provided, then and in every such case the arbitrators shall not only determine the terms and conditions upon which the connection or extension shall be allowed to be made; but also whether the connection or extension should, under the circumstances, be permitted or allowed to be made; but nothing in this section contained shall authorize the making of an open drain or sewer, nor shall anything herein affect the provisions of *The Ditches and Water-courses Act.*

Rev. Stat. c. 220.

(3) Nothing in this section contained shall be construed as limiting or abridging any of the powers conferred on township councils by this Act. 48 V. c. 39, s. 39 (4).

[*For powers of Cities, Townships, Towns and Villages as to Lock-up Houses, see secs.* 458, 459; *and as to Tavern and Shop Licenses, see Rev. Stat. c.* 194.

DIVISION III.—POWERS OF COUNCILS OF TOWNSHIPS, CITIES AND TOWNS.

Respecting Plumbers. Sec. 493 (1).
" *Accidents by fire. Sec.* 493 (2).

493. The council of every township, city, and town may pass by-laws—

Plumbers.

1. For licensing and regulating plumbers ; Plumbers.

Prevention of Accident by Fire.

2. For making better provision for securing the inmates and employees in all factories, hotels, boarding and lodging houses, warehouses, theatres, music halls, opera houses and other public buildings and places of amusement, against accident by fire, and providing for the adoption and erection of proper fire escapes upon all such buildings more than two stories in height. (*f*) 49 V. c. 37, s. 37; 50 V. c. 29, s. 48. Accidents by fire.

DIVISION IV.—POWERS OF COUNCILS OF COUNTIES AND CITIES.

Horse Thieves. Sec. 494.

494. The council of every county or city shall provide by by-law, (*g*) that a sum not less than $20 shall be payable as a reward to any person or persons who shall pursue and apprehend, or cause to be apprehended, any person or persons guilty of stealing any horse or mare within the said county or city, (*h*) and such reward shall be paid out of the funds of Reward for apprehension of persons guilty of horse stealing.

(*f*) See also the *Act for the Prevention of Accidents by Fire in Hotels and other Public Buildings*, 51 Vict. c. 34.

(*g*) The use of the word "shall" seems to make it imperative on the council to pass the by-law.

(*h*) One of the objects of municipal government is the protection of property. In furtherance of this object, it has been held in some of the United States that a municipal corporation may offer a reward for the detection of offenders against the property of another. Thus in cases of arson. *York* v. *Forscht*, 23 Pa. St. 391 ; *Crawshaw* v. *Roxbury*, 7 Gray (Mass.) 374. But in other States the power to offer rewards for the detection of criminals, in the absence of express legislation has been denied. *Hawk* v. *Marion Co.*, 48 Iowa 472; *Gale* v. *South Berwick*, 51 Me. 174; see also *Lee* v. *Flemingsburg*, 7 Dana (Ky.) 28. The offer may be revoked at any time before its terms have been complied with. *Shuey* v. *United States*, 92 U. S. 73. In this Province express legislative sanction is necessary to the exercise of the power. *Cornwall* v. *West Nissouri*, 25 U. C. C. P. 9. See now sec. 481. The power in this section is restricted to rewards for the pursuit and apprehension of a person or persons guilty of stealing any horse or mare within the county, or city. The reward is not to be "*less* than $20." This is the minimum ; so the council may make the reward as much more as they think reasonable. The reward is to be payable to the person "who shall

the corporation on the conviction of the thief, on the order of the Judge before whom the conviction is obtained. (*i*) 46 V. c. 18, s. 494.

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pursue and apprehend," or cause "to be apprehended," the guilty person. It is only to be paid on conviction of the thief, and on the order of the Judge before whom the conviction was obtained. The prisoner hired a horse in the county of York to go to two places in that county. It was not shewn whether he had been at those places, but he afterwards sold the horse in the county of Waterloo, where he was arrested for stealing it and convicted: Held, that the reward for his apprehension was payable by the county of Waterloo. *In re Robinson*, 7 P. R. 239. Any person performing the service, who without such reward, is not bound to perform the service, placing himself in the position described by the statute, may sue for the amount of the reward. If it were the duty of the person who made the arrest to have pursued and arrested him without any reward, he cannot recover, for, so far as he is concerned, the promise is without any consideration. See *Stotesbury* v. *Smith*, 2 Burr. 924; *Stilk* v. *Myrick*, 2 Camp. 317; *Harris* v. *Watson*, Peake 72; *Bridge* v. *Page*, Cro. Jac. 103. It has therefore been held that a watchman, who, while in the discharge of his duty as such, discovers a person in the act of committing the crime of arson, cannot recover the reward offered. *Pool* v. *Boston*, 5 Cush. (Mass.) 219; *Gilmore* v. *Lewis*, 12 Ohio 281; *Means* v. *Hendershott*, 24 Iowa 78. But where three persons broke gaol, and immediately after their escape the defendant, who was sheriff, offered a general reward of $100 for the capture of each prisoner, it was held that the deputy sheriff having succeeded in capturing two of the fugitives, was entitled to $200. *Davis* v. *Munson*, 43 Vt. 677. "Upon the facts as detailed, the plaintiff had authority to arrest these prisoners without process and as a peace officer. It would, in a general sense, have been his duty to do so if they had been pointed out to him under circumstances to assure him of their identity and to lead him to apprehend reasonable danger of losing them if he waited for process. But the fact that he had this authority and was under this general duty did not put him, having no process in hand, under any specific legal obligation to look them up . . . . The plaintiff, being under no specific official obligation to enter upon the detective service, for which he would not legally be entitled to pay from the State, he is clearly a person who might engage in it in reliance upon the offer of this reward," &c. *Per* Steele J. *Ib.*

(*i*) The obligation to pay is *conditional*—(1) On conviction of the thief; (2) On the order of the Judge before whom the conviction is obtained. The plaintiff must in general prove performance according to the terms of the advertisement. See *Neville* v. *Kelly*, 12 C. B. N. S. 740; *Smith* v. *Moore*, 1 C. B. 438; *Thatcher* v. *England*, 3 C. B. 254; *England* v. *Davidson*, 11 A. & E. 856; *Lancaster* v. *Walsh*, 4 M. & W. 16; *Fallick* v. *Barber*, 1 M. & S. 108; *Williams* v. *Carwardine*, 4 B. & Ad. 621; *Tarner* v. *Walker*, L. R. 1 Q. B. 641; L. R. 2 Q. B. 301; see further *Janvrin* v. *Exeter*, 48 N. H. 83; *Codding* v. *Mansfield*, 7 Gray (Mass.) 272; *Auditor* v. *Ballard*, 15 Am. 728.

DIVISION V.—POWERS OF COUNCILS OF COUNTIES, CITIES AND SEPARATED TOWNS.

Respecting Engineers, Inspectors, Gaol Surgeons, etc. Sec. 495 (1).
" *Auctioneers.* Sec. 495 (2).
" *Hawkers and Pedlars.* Sec. 495 (3).
" *Ferries.* Sec. 495 (4).
" *High Schools.* Sec. 495 (5, 6).
" *Support of Pupils at High Schools, Toronto University and U. C. College.* Sec. 495 (7, 8).
" *Endowment of Fellowships.* Sec. 495 (9).
" *Public Fairs.* Sec. 495 (10).
" *Junk Stores.* Sec. 495 (11).

495. The council of any county, city and town separated from the county for municipal purposes, may pass by-laws for the following purposes: By-laws may be made for—

Engineers—Inspectors—Gaol Surgeons, etc.

1. For appointing, in addition to other officers, (*j*) one or more engineers, and also one or more inspectors of the house of industry; also one or more surgeons of the gaol and other institutions under the charge of the municipality; and for the removal of such officers; Appointing engineers, inspectors, gaol surgeons, etc.

Auctioneers.

2. For licensing, regulating, (*k*) and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction; (*l*) and for fixing Licensing, etc., auctioneers.

(*j*) While it is believed that at common law corporations have power to appoint such officers as the nature of their constitution requires, the implied power, if existing at all, should be sparingly exercised. See note *r* to sec. 243, and notes to sec. 479 (2).

(*k*) Power to regulate the conduct of particular trades or callings involves the power to license, but this power must not be so exercised as to create a tax or a monopoly. See note *f* to sub-s. 8 of sec. 489. A person licensed by a city corporation to carry on any particular trade or business, is in no sense the agent or servant of the corporation, so as to render the latter responsible for his acts. *Fowle* v. *Alexandria*, 3 Peters (U. S.) 398; but see *Cole* v. *Nashville*, 4 Sneed. (Tenn.) 162. The granting or refusing of a license is substantially the exercise of a judicial function. *Duke* v. *Rome*, 20 Ga. 635.

(*l*) In order to a sale by auction, within Eng. Stat. 50 Geo, III. c. 41, s. 7, there must be an outcry, &c. See *Allen* v. *Sparkhall*, 1 B. & Al.

the sum to be paid for every such license, and the time it shall be in force; (*m*) 46 V. c. 18, s. 495 (1, 2).

Hawkers and Pedlars.

Hawkers, petty chapmen, etc.

3. For licensing, regulating and governing hawkers or petty chapmen, (*n*) and other persons carrying on petty trades, or who go from place to place or to other men's houses, on foot, or with any animal bearing or drawing any goods, wares or merchandise for sale, or in or with any boat, vessel or other craft, or otherwise carrying goods, wares or merchandise for sale, (*o*) and for fixing the sum to be paid

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100. A city council may prevent sales by auction on the public streets of the city. *White* v. *Kent*, 11 Ohio St. 550; see also *Shelton* v. *Mobile*, 30 Ala. 540. There is no power under this provision to require a license for the right to sell lands by auction. *Reg.* v. *Chapman*, 1 O. R. 582.

(*m*) Apparently no limit is given to the amount that may be exacted for the payment of the license, but it must be reasonable. See note *w* to sub-s. 17 of sec. 479.

(*n*) The term "petty chapman" is not in common use in this country. In the Imperial Dictionary it is said that in modern times it means "more specifically a hawker or one who travels to sell things, a pedlar, one who keeps a stall or booth." As the term pedlar is not used in this sub-section, but only in the heading it is probable that the term petty chapman is here synonymous with pedlar.

(*o*) An enactment of this kind is constitutional. See *Speer* v. *The Commonwealth*, 14 Am. 164; *Morrill* v. *State*, 20 Am. 12. The license is personal and does not qualify a servant or agent in selling. *In re Ford* v. *McArthur*, 37 U. C. Q. B. 542. A single act of selling does not make a man a hawker, so as to require a license. *Rex* v. *Little*, 1 Burr. 609; *Rex* v. *Buckle*, 4 East. 346; *Johnson* v. *Hudson*, 11 East. 180. A licensed auctioneer, going from place to place and selling goods, was held to be a hawker. *Rex* v. *Turner*, 4 B. & Al. 510. In order to constitute a person a hawker, it is not necessary that he should go to more towns than one and there sell goods. *Manson* v. *Hope*, 6 L. T. N. S. 326; 2 B. & S. 498. A person not having goods with him, but merely going about to solicit orders for goods, to be supplied from and by his master, was held not to be a hawker. *Rex* v. *McKnight*, 10 B. & C. 734; see also Eng. Stat. 24 & 25 Vict. c. 21. A traveller for a tea dealer carried samples with him from house to house and took orders which he forwarded to his employer who sent the tea to him. The defendant then got the tae which had been forwarded in packages and delivered it to his customers receiving the price on delivery. On this evidence he was convicted of selling tea as a pedlar without a license contrary to a by-law which prohibited "hawkers or petty chapmen and other persons carrying on petty trades" in the manner pointed out by 46 V. c. 18, sec. 495 (3) (same as first part of this sub-section). Held that defendant was not a "hawker" nor was the word pedlar used

for a license for exercising such calling within the county, city or town, and the time the license shall be in force: (*p*)

In case of counties, for providing at the discretion of the council, either the treasurer or clerk of the county, or the clerk of any municipality within the county, with licenses, in this and the previous sub-section mentioned, for sale to parties applying for the same under such regulations as may be prescribed in such by-laws: (*q*)

Provided always that no such license shall be required for Proviso.

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in the Act, and if he was a "petty chapman or person carrying on a petty trade" the conviction could not be supported for he was not "carrying goods for sale." *Reg.* v. *Coutts*, 5 O. R. 644. (See, now however, clause (*a*) of this sub-section.) A municipality cannot pass a by-law prohibiting unlicensed traders from sending out agents to take orders from private persons for goods and subsequently delivering the goods. *Ib.* A cabinetmaker residing at Leicester and having a shop there, who sent goods to a place called Ashby-de-la-Zouch in a cart, which he accompanied on foot part of the way, and then went to Ashby-de-la-Zouch by the mail, where he employed an auctioneer for the sale of the goods, was held to be a trading person travelling from town to town, within the statute 50 Geo. III. c. 41, s. 7. *Attorney-General* v. *Woolhouse*, 1 Y. & J. 463; see also *Attorney-General* v. *Tongue*, 12 Price 51. Twelve ladies, of whom respondent was one, having purchased materials and made them up into articles of wearing apparel, each in turn for one month carried these articles about, in a basket called a missionary basket, from house to house for sale. The ladies did not find the money to purchase the materials, but the money derived from the sales was applied towards the purchase, and the profits of the sale were devoted to a village school and religious purposes. Held, that respondent did not come within the definition of a pedlar, as used in section 3 of the Pedlars' Act of 1871. *Gregg* v. *Smith*, L. R. 8 Q. B. 302. See further, *Howard* v. *Lupton*, L. R. 10 Q. B. 598. It was held necessary to justify an arrest under our old Hawkers and Pedlars' Act, 58 Geo. III. c. 5, for peddling without a license, that the person should be found trading at the time of the arrest. See *Oviatt* v. *Bell*, 1 U. C. Q. B. 18. It was also held necessary to the validity of a conviction for peddling goods without a license, that the description of goods should be specified in the conviction. *Rex* v. *Selway*, 2 Chit. R. 522; *Rex* v. *Smith*, 3 Burr. 1475. To entitle a party to exemption from penalties on the ground that the place where the hawker exposed his wares for sale was a public market, it must be shewn that it was a legally established market, and not merely a market *de facto*. *Benjamin* v. *Andrews*, 5 C. B. N. S. 299; see further, Burn's Justice, Title, "Hawkers and Pedlars."

(*p*) See note *m* to sub-s. 2 of this section.

(*q*) Money exacted for an illegal license may be recovered back in an action for money had and received. *Lincoln* v. *Worcester*, 8 Cush. (Mass.) 55.

hawking, peddling or selling from any vehicle or other conveyance any goods, wares or merchandise to any retail dealer, or for hawking or peddling any goods, wares or merchandise, the growth, produce or manufacture of this Province, not being liquors within the meaning of the law relating to taverns or tavern licenses, if the same are being hawked or peddled by the manufacturer or producer of such goods, wares or merchandise, or by his *bona fide* servants or employees having written authority in that behalf; and such servant or employee shall produce and exhibit his written authority when required so to do by any municipal or peace officer:

Proviso. And provided also that nothing herein contained shall affect the powers of any council to pass by-laws, under the provisions of section 496 of this Act. 46 V. c. 18, s. 495 (3); 47 V. c. 32, s. 11.

Interpretation "Hawkers."

(*a*) The word "hawkers" in this sub-section shall include all persons who, being agents for persons not resident within the county, (*r*) sell or offer for sale tea, dry goods, or jewellery, or carry and expose samples or patterns of any of such goods to be afterwards delivered within the county to any person not being a wholesale or retail dealer in such goods, wares or merchandise. (*s*)

(*b*) The provisions of any by-law passed or enacted by any municipal council prior to the first day of October, 1885, shall not be held as extending to any persons who, by this sub-section, are to be held as included within the meaning of the word "hawkers." 48 V. c. 40, ss. 1, 2.

(*r*) A member of a firm carrying and exposing samples or making sales of tea, &c., is not within the restriction preventing "agents for persons not resident within the county" from so doing and is not such an agent. *Reg.* v. *Marshall*, 12 O. R. 55.

(*r*) Electrotype ware was held not to be jewellery within this enactment. *Reg.* v. *Chayter*, 11 O. R. 217. The defendant was convicted of selling and delivering teas as the agent of a non-resident of the county in violation of a by-law, the third section of which was a copy of this enactment. The defendant stated that he had formerly sold tea on commission, but purchased that in question for the purpose of evading the by-law. Held, that defendant was on the evidence an independent trader and not an agent, and that the intention to evade the by-law was immaterial so long as there was no agency in fact. *Reg.* v. *McNicol*, 11 O. R. 659. It is no offence

Ferries.

4. For licensing and regulating ferries between any two places within the municipality, under the provisions of *The Act respecting Ferries*, and establishing the rate of ferriage to be taken thereon; but no such law as to ferries shall have effect until assented to by the Lieutenant-Governor in Council, but the powers by this sub-section conferred on county councils shall not extend to a ferry between any two places within the same township. (*t*) 46 V. c. 18, s. 495 (4); 48 V. c. 39, s. 15. Licensing, etc., ferries, etc., Rev. Stat. c. 117, s. 14.

(*a*) Until the council passes a by-law regulating such ferries and in the case of ferries not between two places in the same municipality, the Lieutenant-Governor, by Order in Council, may, from time to time regulate such ferries respectively, and establish the rates to be taken thereon, in accordance with the statutes in force relating to ferries. (*u*) 46 V. c. 18, s. 495 (4 *a*). Until by-law passed, Lieut.-Governor in Council to regulate.

Lands for High Schools.

5. For obtaining in such part of the county, or of any city or town separated within the county, as the wants of the people may most require, the real property requisite for erecting high school houses thereon, and for other high school purposes, and for preserving, improving and repairing such school houses, and for disposing of such property when no longer required; (*v*). Acquiring lands for High Schools, etc.

Aiding High Schools.

6. For making provisions in aid of such high schools as may be deemed expedient; (*a*) Aiding High Schools.

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under this enactment to expose samples of cloth and solicit orders for clothing to be afterwards manufactured from such cloth and to be then delivered to the persons giving such orders. *Reg.* v. *Bassett*, 12 O. R. 51. The term "dry goods" does not include clothing ordered to be manufactured from cloths, samples of which are exposed with a view to solicit orders for such clothing. *Ib.*

(*t*) See sec. 287, and sub-s. 11 of sec. 521.

(*u*) The power of a municipal council is local. It can only be applied to the regulation of ferries within the municipality. In the case of ferries not between two places in the same municipality, the authority to regulate, &c., is vested in the Lieutenant-Governor in Council exclusively.

(*v*) See note *c* to sub. s. 1 of sec. 479.

(*a*) The council of each county, city, township, town, or incorpor-

Supporting Pupils at High Schools, Toronto University, and Upper Canada College.

Supporting certain High School pupils at University of Toronto and U. C. College, etc.

7. For making a permanent provision for defraying the expenses of the attendance at the University of Toronto, and at the Upper Canada College in Toronto, of such of the pupils of the public high schools of the county as are unable to incur the expense, but are desirous of, and in the opinion of the respective masters of such high schools, possess competent attainments for competing for any scholarship, exhibition, or other similar prize offered by such university or college; *See Rev. Stat.* c. 226, s. 36 (4).

Similar provision for attendance at High Schools.

8. For making similar provision for the attendance at any high school, for like purposes, of pupils of public schools of the municipality; *See Rev. Stat.* c. 226, s. 36 (5).

Endowing Fellowships.

Endowing fellowships, etc., in University of Toronto and U. C. College.

9. For endowing such fellowships, scholarships or exhibitions, and other similar prizes in the University of Toronto, and in the Upper Canada College at Toronto, for competition among the pupils of the public high schools in the county, as the council deem expedient for the encouragement of learning amongst the youth thereof; *See Rev. Stat.* c. 226, s. 36 (6).

Public Fairs.

Authorizing the holding, etc., of public fairs, and regulating same.

10. For authorizing, on petition of at least fifty qualified electors of the municipality, the holding of public fairs at one or more of the most public and convenient places (*b*) not separated from the municipality for municipal purposes;

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ated village was authorized by Con. Stat. U. C. c. 63, s. 16, from time to time to levy and collect, by assessment, such sum or sums of money as it might deem expedient to purchase the site, or to rent, build, repair, furnish, warm, and keep in order a grammar school house, for providing the salary of the teachers, and all other necessary expenses of such county grammar school. The statute was held to be permissive not obligatory. *In re Trustees of Weston Grammar School and Counties of York and Peel*, 13 U. C. C. P. 423. But now, see Rev. Stat., c. 226; *In re Trustees of Port Rowan High School*, 23 U. C. C. P. 11; *In re Board of Education of Perth and the Town of Perth*, 39 U. C. Q. B. 34. The three counties of Stormont, Dundas, and Glengarry were formed into five high school districts. Held that the aid granted by the corporation to the high schools to supplement the Government grant must be an equal special rate upon the assessable property of the united counties not upon each high school district. *Re Chamberlain and the United Counties of Stormont, Dundas and Glengarry*, 42 U. C. Q. B. 279.

(*b*) The place selected should not be *a public street*. *Wartman* v.

(*a*) The purpose for which such fairs may be held shall be restricted to the sale, barter and exchange of cattle, horses, sheep, pigs and articles of agricultural production or requirement. (*c*) Purpose of such fairs restricted.

(*b*) The by-law to authorize the establishment of any such fair shall establish rules and regulations for the government of the same, and appoint a person whose duty it shall be to have them carried out, (*d*) and shall also fix the fees to be paid him by persons attending the said fair. (*e*) Rules to be made for governing same.

(*c*) The council authorizing the establishment of a public fair shall, immediately after the passing of a by-law for that purpose, give public notice of the same. (*f*) Public notice of by-law establishing same.

Junk Shops.

11. For licensing and regulating "junk" stores or shops, and for fixing the sum to be paid for a licence so to have or Licensing and regulating "Junk" shops.

Philadelphia, 33 Pa. St. 202-210; *St. John* v. *New York*, 3 Bosw. (N. Y.) 483; *Commonwealth* v. *Rush*, 14 Pa. St. 186; *Commonwealth* v. *Bowman*, 3 Pa. St. 202-206.

(*c*) The grant of a fair does not of itself imply a right in the grantee to prevent persons from selling marketable articles in their private shops on market days. *Macclesfield* v. *Chapman*, 12 M. & W. 18. A person who, at such a fair, exposes goods for sale has a right to occupy the soil with baskets neeessary and proper for containing the goods. *Townend* v. *Woodruff*, 5 Ex. 506.

(*d*) The regulation of fairs and markets in England by by-law has long been a subject of municipal control, and such by-laws are sustained as being reasonable and conducive to health and good government of the municipality. *Player* v. *Jenkins*, 1 Sid. 284; *Pierce* v. *Bartrum*, Cowp. 270; *Rex* v. *Cottrill*, 1 B. & Ad. 67. See also *Mosley* v. *Walker*, 7 B. & C. 40; *Macclesfield* v. *Pedley*, 4 B. & Ad. 397. So in the United States. See *Dillon* on Municipal Corporations, 3rd ed. sec. 380. See further, secs. 497 *et seq.*

(*e*) The grant of a fair, merely with all the liberties and powers usually appertaining to such right does not give a right to take tolls. *Egremont* v. *Saul*, 6 A. & E. 924. A grant of a fair with an express grant of toll passes reasonable toll, though no toll be specified. *Stamford* v. *Pawlett*, 1 C. & J. 57. A toll of one penny for every pig is not necessarily unreasonable. *Wright* v. *Bruister*, 4 B. & Ad. 116.

(*f*) The mode of giving notice is not specified, but publication in some widely circulated newspaper in the locality would no doubt be sufficient. See *Keckely* v. *Commissioners of Roads*, 4 McCord (S. Car.) 257.

keep such "junk" store or shop. (*g*) 46 V. c. 18, s. 495 (5-11.)

[*For powers of Counties, Cities, and Towns as to Houses of Refuge, see sec.* 460.

DIVISION VI.—POWERS OF COUNCILS OF CITIES, TOWNS AND INCORPORATED VILLAGES.

Respecting Light and Heat. *Sec.* 496 (1).
" *Begging in the Streets.* *Sec.* 496 (2).
" *Fire-Arms, Fire-Works.* *Sec.* 496 (3).
" *Enclosure of Vacant Lots.* *Sec.* 496 (4).
" *Driving upon Sidewalks.* *Sec.* 496 (5).
" *Importuning Travellers.* *Sec.* 496 (6).
" *Interments.* *Sec.* 496 (7, 8).
" *Gunpowder.* *Sec.* 496 (9).
" *Wooden Buildings.* *Sec.* 496 (10).
" *Prevention of Fires.* *Sec.* 496 (11-24).
" *Removal of Snow, Ice, Dirt.* *Sec.* 496 (25).
" *Removal of obstructions to Wharves, Waters, etc.* *Sec.* 496 (26).
" *Obstruction of Roads and Streets.* *Sec.* 496 (27, 28).
" *Numbering Houses and Lots—Record of Streets.* *Sec.* 496 (29, 30).
" *Naming Streets.* *Sec.* 496 (31).
" *Cellars.* *Sec.* 496 (32, 33).
" *Sewerage and Drainage.* *Sec.* 496 (34, 35).
" *User of Streets.* *Sec.* 496 (36, 37).
" *Cab Stands.* *Sec.* 496 (38).
" *Telegraph Poles.* *Sec.* 496 (39).
" *Children riding behind waggons.* *Sec.* 496 (40).
" *Sale of Tobacco.* *Sec.* 496 (41).
" *Inspection of Bathing and Boat Houses.* *Sec.* 496 (42).
" *Markets, etc.* *Secs.* 497-502, 503 (1-11).
" *Assize of Bread.* *Sec.* 503 (12).

By-laws may be made for

496. The council of every city, town and incorporated village may pass by-laws:

(*g*) In cities the power to license and regulate junk stores is vested in the commissioners of police. See sec. 436.

Light and Heat.

1. For manufacturing and supplying light and heat under *The Municipal Light and Heat Act*; 46 V. c. 21, s. 2 (1). Rev. Stat. c. 191.

Begging in the Streets.

2 For preventing common begging or persons in the streets from importuning others for help or aid in money, or deformed, or malformed, or diseased persons, from exposing themselves, or being exposed in the public streets to excite sympathy or induce help or assistance from general or public charity; Prevention of begging, etc.

Fire-arms—Fireworks.

3. For preventing or regulating the firing of guns or other fire-arms; and the firing or setting off of fire-balls, squibs, crackers, or fire-works, and for preventing charivaries and other like disturbances of the peace; (*h*) Firing of guns, etc.

Enclosure of Vacant Lots.

4. For causing vacant lots to be properly enclosed; (*i*) Vacant lots.

Driving upon Sidewalks.

5. For preventing the leading, riding or driving of horses or cattle upon sidewalks or other places not proper therefor; (*j*) Driving, etc., upon sidewalks.

(*h*) A shooting ground near a public highway, where persons come to shoot with rifles at pigeons, targets, &c., may be a nuisance. *Rex* v. *Moore*, 3 B. & Ad. 184. So, by means of powder, working stone quarries near the public streets and dwelling houses. *Reg.* v. *Mutters*, 10 Cox 6. Fog signals were held to be within the term fire-works, as used in Eng. Stat. 23 & 24 Vict. c. 139. *Bliss* v. *Lilley*, 3 B. & S. 128. A schoolmaster who permitted an infant pupil under his care to make use of fire-works, was held responsible in an action for the mischief which ensued. *Rex* v. *Ford*, 1 Stark. 421. A. made fire-works and kept them for sale in a house situate on a public street. In his absence, by negligence or accident, a fire took place among the materials of the fire-works, which set light to a rocket and caused it to fly across the street and set fire to a house, in which was a person who was burned to death: Held, that the keeping the fire-works was too remotely the cause of the death to render A. amenable in a charge of manslaughter. *Reg* v. *Bennett*, 4 Jur. N. S. 1088; Bell C. C. 1. A defendant sued for fire-works cannot, under a plea of never indebted, object that the sale of fire-works is illegal. *Fenwick* v. *Laycock*, 1 Q. B. 414.

(*i*) "Vacant lots of *land*" are here intended.

(*j*) A sidewalk is that portion of a highway which pedestrians

Importuning Travellers.

Importuning travellers.

6. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding house, or for regulating persons so employed;

Interments.

Interments.

7. For regulating the interment of the dead, (*a*) and for preventing the same taking place within the municipality;

Bills of mortality.

8. For directing the keeping and returning of bills of mortality; and for imposing penalties on persons guilty of default; (*b*)

Gunpowder.

Gunpowder, care of.

9. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; (*c*)

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have a lawful right to use. See note to sec. 531. The right of the public so to use sidewalks makes it the duty of the municipal authorities to see that horses or cattle should not be led, ridden or driven on the sidewalks. See *Commonwealth* v. *Curtis*, 9 Allen (Mass.) 266. An awning over a sidewalk may be removed by the authority of the corporation. *Pedrick* v. *Bailey*, 12 Gray (Mass.) 161.

(*a*) A by-law made in pursuance of an Act empowering municipal councils to make by-laws for regulating the interment of the dead was held not to be *ultra vires* by reason of its prohibiting interment altogether in a particular cemetery and thereby destroying the private property of the owners of burial places therein. *Slattery* v. *Naylor*, 13 App. Cas. 446.

(*b*) "Bills of mortality" is the common phrase to denote statistics of the dead. The duty to keep such statistics and to make returns therefrom may, it is presumed, be imposed on any one in charge of a public cemetery of any kind within the municipality. See also Rev. Stat. c. 40. The duty may, under this sub-section, be enforced by the ordinary mode of fine or penalty. The fine or penalty must be reasonable. See sub-s. 19 to sec. 479.

(*c*) The manufacturing and keeping large quantities of gunpowder in towns or closely inhabited places is an indictable offence at common law. *Rex* v. *Williams*, 1 Russ. 321; *Rex* v. *Taylor*, 2 Str. 1167. See also *Crowder* v. *Tinkler*, 19 Ves. 617. In England it is now regulated by statute 23 & 24 Viet. c. 139, amended by 24 & 25 Viet. c. 130, and 25 & 26 Viet. c. 98. So also keeping and storing of large quantities of wood, naptha and rectified spirits in a warehouse in the city of London. *Reg.* v. *Lister*, Dears. & B. 209; 26 L. J. Mag. Cas. 196. The English statute 25 & 26 Viet. c. 66, is extended to nitro-glycerine and all other substances for the time being declared by an Order in Council to be specially dangerous. In the United States it has been held that a city corpora-

for regulating and providing for the support, by fees, of magazines for storing gunpowder belonging to private parties; for compelling persons to store therein; for acquiring land, as well within as without the municipality, for the purpose of erecting powder magazines, and for selling and conveying such land when no longer required therefor; 46 V. c. 18, s. 496 (5, 9-12, 14-16).

Wooden Buildings.

Regulating erection of buildings and fences.

10. For regulating the erection of buildings and preventing the erection of wooden buildings, or additions thereto, and wooden fences in specified parts of the city, town, or village; and also for prohibiting the erection or placing of buildings, other than with main walls of brick, iron or stone, and roofing of incombustible material within defined areas of the city, town, or village; (*d*) and for regulating the

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tion may lawfully pass a by-law requiring all gunpowder brought into the city to be conveyed to the public magazine of the city, except when to be retailed, and then to be kept in limited quantities and in secure canisters. *Williams* v. *Augusta*, 4 Ga. 509. Two justices in England, under 12 Geo. III. c. 61, ss. 11, 18, were empowered to adjudge a forfeiture of gunpowder conveyed in the city contrary to its provisions. Where several packages of gunpowder, amounting in the whole to 300 lbs. weight, were sent by different persons to a warehouse in London belonging to a carrier and licensed carman, as a temporary halting place in their transit, it was held that there was no unlawful having or keeping of gunpowder within the meaning of the statute. *Biggs* v. *Mitchell*, 2 B. & S. 523. A conviction, under the statute, awarding a forfeiture of gunpowder, must shew that the person to whom it is adjudged is the person who seized. *Rex* v. *Smith*, 5 M. & S. 133. A person who manufactures and keeps fog-signals—being tin cases filled with gunpowder and fitted with nipples and percussion caps—upon the premises within distances specified by English statute 23 & 24 Vict. c. 139, s. 6, and for which premises he had not a license under sec. 11, was held liable to a penalty. *Bliss* v. *Lilly*, 3 B. & S. 128; see generally, *Webley* v. *Woolley*, L. R. 7 Q. B. 61; *Eliott* v. *Majendie*, *Ib.*, 429; see further, *Brown* v. *Maryland*, 12 Wheat. U. S.) 419, 443.

(*d*) Where a municipal corporation was authorized to make by-laws regulating the erection of buildings, a by-law requiring the issue of building licenses and the payment of a license fee was held valid. *Welch* v. *Holdkiss*, 12 Am. 383. The Court always interfere at the instance of the Attorney-General to restrain the continuance and compel the abatement of a public nuisance. But the act prohibited by a by-law against the erection of wooden buildings within prescribed limits, would not appear to be such a nuisance as to be properly restrained by injunction. *Waupun* v. *Moore*, 17 Am. 446; *Village of St. John* v. *McFarlan*, 20 Am. 671. The "specified parts

Establishments of fire limits.

repairing or alteration of roofs or external walls of existing buildings within the said areas, so that the said buildings may be made more nearly fire-proof; and for authorizing the pulling down or removal, at the expense of the owner thereof, of any building or erection which may be constructed, repaired or placed in contravention of any by-law; 47 V. c. 32, s. 16.

Preventing Fires.

Fire companies, etc.

11. For appointing fire wardens, fire engineers and firemen, and promoting, establishing, and regulating fire com-

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of the city, town or village" mentioned in the first part of the subsection, and "defined areas of the city, town or village" mentioned in the latter part thereof, mean substantially one and the same thing, viz., the ascertainment of a certain area having certain limits within which prohibited buildings are not to be erected and other buildings to be regulated—in other words, the establishment of fire limits. See *Dillon* on Municipal Corporations, 3rd ed., sec. 405. Where a municipal corporation, under power to prevent the erection of *wooden* buildings, passed a by-law restraining the erection of lath-and-plaster buildings within certain limits, the by-law as to the excess was held void. *Attorney-General* v. *Campbell*, 19 Grant 299. The *power*, since the last-mentioned decision, has, it will be observed upon reading the subsection, been extended to the prohibition of buildings "*other* than with main walls of brick, iron or stone, and roofing of incombustible material." The removal of a wooden building to the prohibited district would be an "erection" or "placing," within the meaning of such a by-law. *Wadleigh* v. *Gilman*, 12 Me. 403; see further, *Shield* v. *Sutherland*, 6 H. & N. 796; *Hobbs* v. *Dance*, L. R. 9 C. P. 30. Ordinary repairs would not, however, be either an "erection" or "placing." *Brady* v. *Insurance Co.*, 11 Mich. 425, 469; *Booth* v. *State*, 4 Conn. 65; *Brown* v. *Hunn*, 27 Conn. 332; *Tuttle* v. *State*, 4 Conn. 68; *Stewart* v. *Commonwealth*, 10 Watts (Pa.) 307. The power to pull down or remove a building erected or placed in contravention of the by-law, though a necessary, is a strong power, see note *s* to sub-s. 15 of sec. 489, and should only be exercised in cases clearly of contravention, and after notice to the person offending, so as to give him an opportunity to show cause before the destruction of his property See note *z* to sub-s. 47 of sec. 489. It would seem that a person specially injured by the contravention of such a By-law would have an action against the wrong-doer. *Aldrich* v. *Howard*, 7 Rh. Is. 199, but not against the Municipality. *Forsyth* v. *The Mayor, &c., of Atlanta*, 12 Am. 576. Suffering the prohibited building to remain after fine would appear not to be a continuing offence, so as to subject the offender to a second fine. The remedy in such a case would appear rather to be the demolition of the building. See note *a* to sub-s. 28 of sec. 496. Where in such a case there is power to demolish the building a Court of Equity will not in general be disposed to interfere with the exercise of the power. See *Auckland* v. *Westminster Local Board*, L. R. 7 Chy. 597; *Kerr* v. *Corporation of Preston*, 6 Ch. D. 463.

panies; hook-and-ladder companies, and property saving companies; (*e*)

(*e*) The prevention of damage to buildings by fire is an object which affects the interests of all the inhabitants, and relieves them from a common burden and a common danger, and is therefore within the scope of municipal authority. *Allen* v. *Taunton*, 19 Pick. (Mass.) 485; *Torrey* v. *Millbury*, 21 Pick. (Mass.) 64; *Hardy* v. *Waltham*, 3 Metc. (Mass.) 163; *Huneman* v. *Fire District*, 37 Vt. 40; *Wadleigh* v. *Gilman*, 12 Me. 403; *Vanderbilt* v. *Adams*, 7 Cowen (N.Y.) 349, 352. Where such is the case, the municipal council is authorized to appoint and pay fire wardens, fire engineers, firemen, fire companies, hook and ladder companies and property-saving companies. *Van Sickles* v. *Burlington*, 27 Vt. (1 Wms.) 70; *Robinson* v. *St. Louis*, 28 Mo. 488; *Miller* v. *Savannah Fire Co.*, 26 Ga. 678. The necessary powers are here in express terms conferred. These powers are in their nature legislative and governmental; the extent and manner of their exercise, within the sphere prescribed by the statute, are necessarily to be determined by the judgment and discretion of the proper municipal authorities; and for any defect in the execution of such powers the corporation is not to be held liable to individuals. The power of the municipal council over the subject is that of a delegated *quasi* sovereignty, which excludes responsibility to individuals for the neglect or nonfeasance of an officer or agent charged with the performance of duties. *Wheeler* v. *Cincinnati*, 19 Ohio St. 19; *S. C.* 2 Am. 368. In the absence of express statute, corporations are not liable to actions occasioned by negligence in using or keeping in repair engines owned by them. *Eastman* v. *Meredith*, 36 N. H. 284; *Oliver* v. *Worcester*, 102 Mass. 489, 499; *Fisher* v. *Boston*, 104 Mass. 87; 6 Am. 196; *Jewett* v. *New Haven*, 9 Am. 382; *Torbush* v. *City of Norwich*, *Ib.* 395; *Heller* v. *Sedalia*, 14 Am. 444; *Hayes* v. *Oshkosh*, *Ib.* 760. *Smith* v. *Rochester*, 76 N. Y. 506; *Maximilian* v. *Mayor*, 62 N. Y. 160. Nor is a city liable for neglect in cutting off water from a hydrant but for which the fire might have been extinguished. *Tainton* v. *Worcester*, 25 Am. 90. The fire wardens, fire engineers, and other similar officers, are not the servants and agents of the city so much as they are public officers, for whose acts in their official capacity, the city is not responsible, except when expressly so provided by statute. *Taylor* v. *Plymouth*, 8 Metc. (Mass.) 462. It is different where the corporation is charged by law with the performance of a duty purely ministerial in its character. *Scott* v. *Manchester*, 1 H. & N. 59; 2 H. & N. 204; *Brinkmeyer* v. *Evansville*, 29 Ind. 187; *Western College* v. *Cleveland*, 12 Ohio St. 375; see further, note *d* to sub s. 32 of this section; or an act is done by the city for its own corporate advantage or immediate emolument. *Oliver* v. *Worcester*, 102 Mass. 489; or perhaps where the neglect is a duty cast upon a gas company or a water company, or other trading company of a *quasi* public character, to the prejudice or loss of one of the public. *Atkinson* v. *Newcastle and Gateshead Water Works Co.*, L. R. 6 Ex. 404; reversed; 36 L. T. N. S. 761. A railway company was held liable for running a locomotive over a hose and destroying it, whereby a building was lost which otherwise might have been saved from destruction by fire. *Metallic Compression Casting Co.*, v. *Fitchburg R. W. Co.*, 12 Am. 689.

Medals and rewards. Aid to widows.

12. For providing medals or rewards for persons who distinguish themselves at fires; and for granting pecuniary aid, or otherwise assisting the widows and orphans of persons who are killed by accident at such fires; (*f*)

Fire in stables, etc.

13. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places;

Dangerous manufactories.

14. For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire; (*g*).

Chimneys, stoves, etc.

15. For preventing, and for removing or regulating the construction of any chimney, flue, fire-place, stove, oven, boiler, or other apparatus or thing which may be dangerous in causing or promoting fire;

Regulating construction etc., of chimneys.

16. For regulating the construction of chimneys as to dimensions and otherwise, and for enforcing the proper cleaning of the same, and for compelling manufacturers and others to have such chimneys or other apparatus as shall consume the smoke or prevent the same from fouling the atmosphere or being carried by the wind or otherwise to other shops, houses, or premises, to the inconvenience or injury of the neighbouring premises or residents therein; (*h*)

Ashes.

17. For regulating the mode of removal and safe keeping of ashes; (*i*)

(*f*) The providing of medals or other rewards for those who distinguish themselves at fires, and the granting of pecuniary aid to the widows and orphans of those who lose their lives while in the discharge of such a duty, and owing thereto, is a laudable purpose for which full power is here given. See *Reg.* v. *Combe*, 13 Q. B. 179; 3 New Sess. Cases 394; *Ex parte Loader*, 13 Jur. 192.

(*g*) Manufactories or trades injurious to health may be restrained. See. 489, sub-secs. 41, 44. Similar power is here conferred as to "manufactories or trades dangerous in causing or promoting fire." These may be either prevented or regulated. Indeed, there is power in case of emergency, to destroy houses to prevent the spread of fire. See sub-sec. 23 of this section. The council must personally exercise the powers given and cannot delegate its functions. See *Reg.* v. *Webster*, C. L. T. 299.

(*h*) A by-law providing that no persons other than chimney inspectors appointed by the city council, should sweep or cause to be swept, for hire or gain any chimney or flue, was held bad. *Reg.* v. *Johnson*, 38 U. C. Q. B. 549.

(*i*) Many fires are said to be "accidental" which are the result of neglect to keep ashes in fireproof utensils; and yet regulations for

18. For regulating and enforcing the erection of party walls; (*j*) Party walls.

19. For compelling the owners and occupants of houses to have scuttles in the roof thereof, with approaches, or stairs or ladders leading to the roof; Scuttles, ladder, etc., to houses.

20. For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident; Guarding buildings against fire.

21. For requiring the inhabitants to provide so many fire buckets, in such manner and time as may be prescribed; and for regulating the examination of them, and the use of them at fires; Fire buckets.

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the safe keeping of ashes are seldom made, and when made rarely enforced. Ashes may, under certain English statutes, be removed as refuse or rubbish. See *Filbey* v. *Combe*, 2 M. & W. 677; *Low* v. *Dodd*, 1 Ex. 845; *Lynden* v. *Stanbridge*, 2 H. & N. 45. See further, *Reg.* v. *Wood*, 5 E. & B. 49; *Guardians of Holborn Union* v. *Vestry of St. Leonard, Shoreditch*, 2 Q. B. D. 145; *Gay* v. *Cadby*, 2 C. P. D. 391.

(*j*) Regulations as to party walls must be strictly followed. If a person, under colour of such regulations do injury to his neighbour, he is liable to be sued. *Pratt* v. *Hillman*, 4 B. & C. 269; see also *Reg.* v. *Ponsford*, 1 D. & L. 116. No man has a right to presume that his neighbour will hereafter build a house adjoining to his, and erect half of his outside wall on his neighbour's ground in consequence of such presumption. *Barlow* v. *Norman*, 2 W. Bl. 959. An external wall cannot be said to be a party-wall. *Sims* v. *Estate Co.*, 14 L. T. N. S. 55. A party-wall is a thing which belongs to two persons as part owners, or divides two buildings one from another. *Weston* v. *Arnold*, L. R. 8 Chy., 1084. The English Statute 14 Geo. III. c. 78, was held not to make party walls common property. *Matts* v. *Hawkins*, 5 Taunt. 20. If one proprietor added to the height of such a party-wall, and the other pulled down the addition, the first might maintain trespass for pulling down so much of it as stood on the half of the wall which was erected on his own soil. *Ib.* The property in a wall, though erected at joint expense, follows the property of the land whereon it stands. *Ib.* Power to pass ordinances "to authorize the erection of party-walls, &c., and to regulate them," has been held to include the power to authorize their erection upon the application of either owner, and without the consent of the other. *Hunt* v. *Ambruster*, 17 N. J. Eq. 208. It has been held that the owner who pulls down a party-wall, under the authority of the Metropolitan Building Act, 18 and 19 Vict. c. 122, is not bound to protect, by boarding or otherwise, the rooms of the adjacent owner left exposed to the weather. *Thompson* v. *Hill*, L. R. 5 C. P. 564. See further as to party walls *Scott* v. *Legg*, 2 Ex. D. 39; *Rindge* v. *Baker*, 15 Am. 475. As to the meaning of the word "owner" in such an Act, see *Wheeler* v. *Gray*, 4 C. B. N. S. 584; 6 C. B. N. S. 606; and *Tubb* v. *Good*, L. R. 5 Q. B. 443.

Inspection of premises.

22. For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same ; (*k*)

Preventing spreading of fire.

23. For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire ; (*l*)

(*k*) This is an important sub-section. It does not follow that because people are required to do certain things, even for their own safety, that they will do as required. Supervision is necesssary. The power conferred by this sub-section is for authorizing appointed officers to enter at all *reasonable times*, upon *any* property, subject to the regulations of the council, "In order to ascertain whether such regulations are obeyed." But the more important part follows—that which enables the officer "to enforce or *carry into effect the same.*" The enforcement might be by prosecution and fine; but the words "carry into effect the same" appear to indicate a specific performance of the duty by the officer. If the regulation be that certain things shall not be, the officer may be held to have power to remove them; but if it be that certain things shall be, he is not likely to supply them without some provision for compensating him. No property should, it is apprehended, be demolished or destroyed without an opportunity of some kind to the party concerned of being heard. See *Cooper* v. *Board of Works, &c.*, 14 C. B. N. S. 180; se also *Reg* v. *Sparrow*, 16 C. B. N. S. 209; *Bauman* v. *Vestry of St. Pancras*, L. R. 2 Q. B. 528; *Smith* v. *Simpson*, L. R. 6 C. P. 87.

(*l*) Rights of private property may be made subordinate to public necessity. The right to destroy buildings in order to prevent the spread of a conflagration is one that has been exercised from the earliest times. See note *n* to sub-s. 15 of sec. 489. In such a case, in the absence of an express statutory liability, the owner of property so destroyed is without remedy. See *Dewey* v. *White*, M. & M. 56; *Dillon* on Municipal Corporations, 3rd. ed., sec. 955 *et seq.* If there be a remedy given by the statute or at common law, existing because of excess, the fact that the owner was warned does not affect his right of recovery. *New York* v. *Pentz*, 24 Wend. (N.Y.) 668; sec also *Pentz* v. *Ætna Ins. Co.*, 9 Paige, (N.Y.) 568; *City Fire Ins. Co.* v. *Corlies*, 21 Wend. (N.Y.) 367. The opinions of bystanders, as to whether the building, if allowed to stand, would have taken fire, was held not be admissible evidence. *New York* v. *Pentz*, 24 Wend. (N.Y.) 668. As one whose property has been destroyed, by the order of the public authorities, for the public benefit, has a strong natural equity for compensation, a statute making the corporation liable should be liberally expounded, though not strained to cover cases not fairly embraced within it. *Per* Nelson, C. J., in *New York* v. *Lord*, 17 Wend. (N.Y.) 285, affirmed 18 Wend. (N.Y.) 126; see also *New York* v. *Pentz*, 24 Wend. (N.Y.) 668; *Stone v. Mayor, &c.*, 25 Wend. (N.Y.) 157. Such a statute ought not to be construed to apply to a building pulled down after it is so far burnt that it is impossible to save it. *Taylor* v. *Plymouth*, 8

24. For regulating the conduct, and enforcing the assistance of the inhabitants present at fires, and for the preservation of property at fires; . Enforcing assistance at fires.

Removal of Snow, Ice, Dirt

25. For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them; and to remove and clear away all snow, ice and dirt, and other obstructions, from the sidewalks, streets and alleys adjoining such premises; and also to provide for the cleaning of sidewalks and streets adjoining vacant property, the property of non-residents, and all other persons who, for twenty-four hours, neglect to clean the same; (*m*) and to remove and Removal of snow, etc. Cleaning of sidewalks, streets, etc.

Metc. (Mass.) 462 If the statute give a right to compensation and prescribe no specific remedy, an action will lie. *Russell* v. *New York*, 2 Denio. (N.Y.) 461. This sub-section, providing for pulling down or demolishing "adjacent houses *or other erections*," apparently does not extend to personal property. See *Stone* v. *New York*, 20 Wend. (N.Y.) 139; 25 Wend. (N.Y.) 157; *New York* v. *Lord*, 17 Wend. (N.Y.) 285; 18 Wend. (N.Y.) 126.

(*m*) An Act authorizing a local board of health to provide for the removal of "dirt, ashes, rubbish, filth, dung, and soil," was held not to authorize the passing of a by-law for the removal of snow. *Reg* v. *Wood*, 5 E. & B. 49. It has been held in this Province that, in the absence of any public regulation, people are not compelled to keep the roofs of their houses clear of snow, or to detain the snow on the roofs, so that it cannot slide from thence into the street. *Lazarus* v. *Toronto*, 19 U. C. Q. B. 1. The contrary has been held in the United States. *Shipley* v. *Fifty Associates*, 101 Mass. 251; 3 Am. 346. Where however there was a by-law requiring citizens to keep their roofs clear of ice and snow, and it was proved that about half an hour before the accident, which was the subject of the action, the defendant was notified of the dangerous state of the ice and snow on his roof but took no precautions against accident, it was held that there was evidence of negligence to go to the jury. *Landreville* v. *Gouin*, 6 O. R. 455. In the United States it has been also held that persons suffering snow and ice to accumulate upon an awning placed by them over a sidewalk, if the awning be insufficient to hold the snow and ice, and it in consequence give way and injure a passer-by, are liable to damages. *Milford* v. *Holbrook*, 9 Allen (Mass.) 17. It would seem that, *prima facie*, the occupants of the building, and not the owners, out of occupation, are the proper persons to be sued in such an action. *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 249. See also *Burt* v. *Boston*, 122 Mass. 223. But if the roof be under the control of the landlord, and not of the tenant, the former would be liable. *Shipley* v. *Fifty Associates*, 101 Mass. 251; 3 Am. 346. A structure such as a cornice of a building projecting over a street in a city in such a manner as to be dangerous to passers-by, is a nuisance which the corporate authorites may abate, and if they fail to do so after

clear away all snow and ice, and other obstructions, from such sidewalks and streets, at the expense of the owner or occupant in case of his default; (*n*) and in case of non-payment to charge such expenses as a special assessment against such premises, to be recovered in like manner as other municipal rates; (*o*) 46 V. c. 18, s. 496 (17-31).

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notice of its dangerous character the city will be liable to any one injured thereby. *Grove* v. *Fort Wayne*, 15 Am. 262. See further *Mullen* v. *St. John*, *Ib.* 530. It would also seem that the accumulation of snow and ice on a sidewalk, in the absence, at all events, of a public regulation on the subject, would not render the adjoining proprietor liable to an action for an accident arising therefrom. See *Shepherd* v. *Midland R. W. Co.*, 25 L. T. N. S. 879; *Sharp* v. *Powell*, L. R. 7 C. P. 253; *Skelton* v. *Thompson*, 3 O. R. 11. See also *Bliss* v. *Boeckh*, 8 O. R. 451; *Bleakley* v. *Corporation of Prescott*, 12 A. R. 637. The city of Boston, under the power "to make needful and salutary by-laws," passed a by-law requiring the tenant or occupant, or, in case there should be no tenant, the owners of buildings bordering on certain streets, to clear snow from the sidewalks adjoining their respective buildings, &c. It was held valid. The by-law was justly regarded by the Court as a police regulation, requiring a duty to be performed, highly salutary and advantageous to the citizens of a populous and closely built city, imposed upon them because they are so situated as that they can most promptly and conveniently perform it; and it is laid not upon a few, but upon a numerous class, and equally upon all who are within the description composing the class, and who commonly derive a peculiar benefit from the duty required. See *Dillon* on Municipal Corporations 3rd ed. sec. 394. Even when such a by-law is passed and its provisions neglected, it would seem that no action will lie by a person aggrieved against the persons whose duty it is, under the by-law, to remove the snow and ice. *Kirby* v. *Boylston Market Association*, 14 Gray (Mass.) 169; *Bateman* v. *Marriott*, 9 Md. 160. The remedy, at all events, so far as the sidewalk is concerned, if there be one, would appear to be against the municipal corporation, for alleged non-repair, and not against the individual proprietor. *Flynn* v. *Canton Co.*, 17 Am. 603.

(*n*) It was held, in the Common Pleas, that an action would not lie against the city of Toronto for a slight accumulation of ice on one of the sidewalks of the principal street of the city, resulting in an injury to the plaintiff, although the adjoining proprietor omitted to remove it within the time provided by by-law, and although the city authorities had neglected to appoint any officer whose duty it was to enforce the provisions of the by-law. *Ringland* v. *Toronto*, 23 U. C. C. P. 92. Galt, J., nonsuited the plaintiff at the trial, and Gwynne, J. (the Chief Justice being absent), delivered the judgment of the Court, which appeared to indicate that no action would lie against a municipal corporation for alleged non-repair, unless the alleged non-repair be such as to amount to an indictable nuisance. But this view of the statute was dissented from by Harrison, C. J., in *Burns* v. *Toronto*, 42 U. C. Q. B. 560. See further, sec. 531, and notes thereto.

(*o*) This charging must, it is apprehended, be done by the city

(*a*) The council may, in the by-law passed for the purposes of this sub-section, define certain areas or streets within the municipality, within or upon which the by-law shall be operative. 48 V. c. 39, s. 17.

Removal of obstructions from wharves, waters, etc.

By-laws to regulate the cleanliness of wharves, docks, &c.

26. For regulating and compelling the removal from any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water, of all sunken, grounded or wrecked vessels, barges, craft, cribs, rafts, logs or other obstructions or incumbrances, by the owner, charterer or person in charge, or any other person who ought to remove the same; 47 V. c. 32, s. 12.

Obstruction of Roads or Streets.

Preventing obstruction and fouling

27. For regulating or preventing the encumbering, injuring or fowling, by animals, vehicles, vessels or other means, (*p*)

clerk when making up the collectors roll. The intention is to make the cost of removal of snow or ice which has been allowed to accumulate, a charge against the premises from the front of which it is removed by the city authorities.

(*p*) The primary object of the street is for the free passage of the public, and anything which, *without necessity*, impedes that free passage is a nuisance. *Rex* v. *Russell*, 6 East 430; *In re Cline* v. *Cornwall*, 21 Grant 142. The iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway the valve cover projected an inch above it. The plaintiff's horse using the highway stumbled over the valve cover and was hurt. In an action against the defendants, who were both the water authority and the highway authority, for the injury to the horse it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway and that the plaintiff was entitled to recover. *Kent* v. *Worthing Local Board*, 10 Q. B. D. 118. But see *Moore* v. *Lambeth Waterworks Co.*, 17 Q. B. D. 462. See also *Reg.* v. *Mayor, &c., of Poole*, 19 Q. B. D. 602. The right of any one person lawfully to use the street is subject to the right of any other person to make a corresponding use. Thus the carriage and delivery of goods, &c., is the legitimate use of a street, and may result in the temporary obstruction of public transit. No man has a right to throw wood or stones into the street at pleasure. But, inasmuch as fuel is necessary, a man may throw wood into the street for the purpose of having it carried into his house, and it may lie there a reasonable time. So, because building is necessary, stones, bricks, lime, sand and other materials may be placed on the street, provided it is done in the most convenient manner. *Commonwealth*

of streets, etc.

of any road, street, square, alley, lane, bridge or other communication;

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v. *Passmore*, 1 Serg. & R. (Pa.) 217; approved in *People* v. *Cunningham*, 1 Denio. (N.Y.) 524; *Clark* v. *Fry*, 8 Ohio 358-374; *St. John* v. *New York*, 3 Bosw. (N.Y.) 483; *Wood* v. *Mears*, 12 Ind. 515; *O'Linda* v. *Lothrop*, 21 Pick. (Mass.) 292. "A cart or waggon may be unloaded at a gateway, but this must be done with promptness. So as to the repairing of a house: the public must submit to the inconvenience occasioned necessarily in repairing the house; but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain." *Per* Lord Ellenborough, in *Rex* v. *Jones*, 3 Camp. 231; see also *Thorpe* v. *Brumfitt*, L. R. 8 Chy. 650. A man has no right to eke out the inconvenience of his own premises by taking the public highway into his timber yard, *Ib.*; or stone yard. *Cushing* v. *Adams*, 18 Pick. (Mass.) 110; *Commonwealth* v. *King*, 13 Metc. (Mass.) 115. A highway is not to be used as a stable-yard. *Rex* v. *Cross*, 3 Camp. 224; see also *Ridley* v. *Lamb*, 10 U. C. Q. B. 354; see further *Mott* v. *Schoolbred*, L. R. 20 Eq. 22, or as a place for the deposit of a cart and machinery for the purpose of taking photographic likenesses. *Reg.* v. *Davis*, 24 U. C. C. P. 575. Or a projecting show board. *Read* v. *Perrett*, 1 Ex. D. 349; see further, *Original Hartlepool Collieries Co.* v. *Gibb*, 5 Ch. D. 713. A stage coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time. *Rex* v. *Cross*, 2 Camp. 224. So long as the alleged obstruction is for the public convenience there can be no reasonable ground of complaint. *Rex* v. *Russell*, 6 B. & C. 566; but see *Rex* v. *Ward*, 4 A. & E. 384. A railway company has no right to turn a highway into a yard for cars. *Vars* v. *Grand Trunk R. W. Co.*, 23 U. C. C. P. 114; see also *Harris* v. *Mobbs*, 3 Ex. D. 268. A man has no right to occupy one side of a street before his warehouses, in loading and unloading his waggons, for several hours at a time, both day and night, so that no carriage can pass on that side of the street, although there be room for two carriages to pass on the opposite side of the street. *Rex* v. *Russell*, 6 East. 427. If a man does anything or permits anything on his premises in view of the public, and crowds of persons are thereby attracted to it, to the inconvenience of the public, that thing he cannot be allowed to do. A bookseller in Fleet street took out the frames of his first-floor windows, and put figures into the windows. These figures attracted such crowds to gaze at them that the bookseller was convicted of obstructing the highway. *Rex* v. *Carlile*, 6 C. & P. 636. Attracting and keeping crowds of people an unreasonable time by reason of speeches may subject to prosecution. *Rex* v. *Sarmon*, 1 Burr. 516; *Barker* v. *Commonwealth*, 19 Pa. St. 412. Where the private right of the owner of a house adjoining a highway to access from his house to the highway is interfered with by an unreasonable use of the highway, he is entitled to recover damages from the wrongdoer, in respect of loss of custom in the business which he carries on in his house. He is entitled also to recover damages on the ground that he has suffered a particular injury from a public nuisance. *Fritz* v. *Hobson*, 14 Ch. D. 542. The right of a landowner to use a public highway, *e. g.*, for the purpose of bringing materials for the building

28. For directing the removal of door-steps, porches, railings, or other erections, or obstructions projecting into or over any road or other public communication, (*a*) at the

Removal of door-steps, etc.

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of a house on his land must be exercised reasonably. If there are several ways of access to the land there is no absolute right to use the most convenient way exclusively without regard to the convenience of neighbouring landowners. *Ib.* A person who had mills which were partly on a road allowance and partly on a public river, by the waters of which the mills were worked, was held not to have such a rightful interest as to entitle him to complain of an obstruction to the river. *Giles* v. *Campbell*, 19 Grant 226. A municipal corporation has no power to order the construction of weigh scales on one of the principal streets in the municipality, *Cline* v. *Cornwall*, 21 Grant 129 ; or to authorize a cab stand to be so stationed on a public street as to be a nuisance to adjoining proprietors. *In re Davies and the Village of Clifton*, U. C. Q. B., *Coram* Morrison, J., June, 1877. But see *Colborne* v. *Town of Niagara Falls*, 9 O. R. 168. The acts of several persons in obstructing a highway may together constitute a nuisance which will be restrained though the damage occasioned by the acts of any one, if taken alone, would be inappreciable. *Thorpe* v. *Brumfitt*, L. R. 8 Chy. 650 ; *Cline* v. *Cornwall*, 21 Grant 129. A city council having "exclusive power over streets," has the right by by-law to determine to what extent and under what circumstances they may be encumbered with building materials. *Woods* v. *Mears*, 12 Ind. 515 ; but see *Ball* v. *Armstrong*, 10 Ind. 181. Such a by-law will protect parties acting under it when such actions are not grounded on negligence of the defendants. *Ib.* The corporation may, however, require a bond of indemnity before granting such a privilege. *McCarthy* v. *Chicago*, 53 Ill. 38. The conditions attached to the permission must be strictly observed. *Lowell* v. *Simpson*, 10 Allen (Mass.) 88.

(*a*) Owners or occupiers of houses abutting on streets have a right to make a reasonable use of the street. Warehouses with doors and windows and opening upon the street, and shutters projecting on the same when open, in the absence of a statute or by-law to the contrary, held not unreasonable. *Underwood* v. *Carney*, 1 Cush. (Mass.) 285 ; *Gerrard* v. *Cooke*, 2 B. & P. N. R. 100 ; *O'Linda* v. *Lothrop*, 21 Pick. (Mass.) 292. So openings communicating with underground apartments, so long as not dangerous. *Bacon* v. *Boston*, 3 Cush. (Mass.) 174 ; *Lowell* v. *Spaulding*, 4 Cush. (Mass.) 277. The powers there conferred are, to pass by-laws for directing the removal of door-steps, porches, railings or other erections or obstructions " projecting into or over any road, &c. See *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054. Strictly speaking, no one has a right to project his building or any part of it beyond the line of road. But this does not mean a strict mathematical line. *Tear* v. *Freebody*, 4 C. B. N. S. 228 ; see also *St. George's Vestry* v. *Sparrow*, 16 C. B. N. S. 209. An obstruction beyond a substantially regular line must, if insisted upon by the municipal authorities, be removed. *Bauman* v. *St. Pancras*, L. R. 2 Q. B. 528 ; *Ecclesiastical Commissioners* v. *Clerkenwell*, 4 L. T. N. S. 599 ; 3 De G. F. & J. 688 ; *Reg.* v. *Jay*, 8 E. & B. 469. Where a man under a contract to build accord-

expense of the proprietor or occupant of the property connected with which such projections are found.

Numbering Houses and Lots.

Numbering houses, etc.

29. For numbering the houses and lots along the streets of the municipality, and for affixing the numbers to the houses, buildings, or other erections along the streets, and for

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ing to a specified plan and according to the Metropolitan Building Acts, commenced building according to the plan, which was in some particulars in contravention of the Building Acts, and upon being cautioned by the board stopped building and refused to proceed; Held that he was bound to rebuild in conformity with the plan, modified so as to meet the requirements of the Acts. *Cubitt* v. *Smith*, 11 L. T. N. S. 298. By-laws were made by the local board of Sunderland, under the English Public Health Act, 1848, s. 115, and the Local Government Act, s. 34, by one of which (No. 12) all party walls except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which (No. 42) it was provided "That in case any offence under any of the foregoing by-laws shall continue, the person offending shall be liable to further penalty not exceeding 40s. for each day during which such offence shall continue after written notice of the offence has been given by the local board to the offender." A person having been convicted and fined for an offence against the by-law No. 12, in building a party-wall four and a half inches in thickness instead of nine inches, was convicted upon an information charging him, under by-law No. 42, with *continuing* the offence, and again fined. Held, that suffering the party-wall to remain unaltered was not a continuing offence within by-law No. 42, or if it was that the by-law was unreasonable—the appropriate remedy being the removal of the structure by the board, as authorized by sec. 34 of the Local Government Act, 1858. *Marshall* v. *Smith*, L. R. 8 C. P. 416; see further, *Hall* v. *Nixon*, L. R. 10 Q. B. 152; see also *Cheetham* v. *Mayor, &c., of Manchester*, L. R. 10 C. P. 249. By sec. 75 of the Metropolitan Local Management Amendment Act, the erection, without the consent of the Metropolitan Board of Works, of any building, &c., in any street, &c., beyond the general line of buildings, is prohibited; and it is enacted that for any infringement of that provision, the vestry or board may summon the offender before a Justice who may order the demolition of the building, and make an order as to costs; and that on default of the owner, the vestry or board may enter and demolish it. And sec. 107 enacts that "no person shall be liable for the payment of any *penalty* or forfeiture under the recited Acts, or that Act, for any offence made cognizable before a Justice, unless the complaint respecting such offence have been made before such Justice within six months next after the commission or discovery of such offence." Held that the limitation clause applied only to the case of pecuniary penalties or forfeitures, and not to offences under sec. 75. *Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441; see further, *Commercial Bank* v. *Cotton*, 17 U. C. C. P. 214, 447.

charging the owner or occupant of each house or lot with the expense incident to the numbering of the same.

Record of streets, numbers, etc.

30. For keeping (and every such council is hereby required to make and keep) (*b*) a record of the streets and numbers of the houses and lots numbered thereon respectively, and entering thereon, and every such council is hereby required to enter thereon a division of the streets with boundaries and distances for public inspection. 46 V. c. 18, s. 496 (32-35).

Naming Streets.

For marking the boundaries of and naming streets, etc.

31. For surveying, settling, and marking the boundary lines of all streets, roads, and other public communications, and for giving names thereto, (*c*) and affixing such names at the corners thereof, on either public or private property; but no by-law for altering the name of any street, square, road, lane, or other public communication, shall have any force or effect, unless passed by a vote in favour thereof of at least three-fourths of the whole council, nor unless and until the by-law has been registered in the registry office of the registry division; and the registrar shall be entitled to a fee of $1 for every by-law so registered, and for the necessary entries and certificates in connection therewith; 46 V. c. 18, s. 496 (36); 48 V. c. 39, s. 18.

(*a*) Every by-law changing the name of a street in a city or town shall state the reasons for the change, and

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(*b*) Most of the preceding sub-sections are discretionary. It is in the power of the council to refrain from exercising the powers conferred in the discretionary sections, but the provisions of this sub-section are obligatory. Every council is "hereby required" to make and keep a record of the streets and numbers, &c., for public inspection. There are cases where even the word "may" should, looking at the context, be construed as imperative. See *Rex* v. *Barlow*, 2 Salk. 609; *Blake* v. *Powell*, 2 E. & B. 210; *McDougall* v. *Paterson*, 11 C. B. 755; *Reg.* v. *Tithe Commissioners*, 14 Q. B. 459. The object of this sub-section is to avoid the inconvenience either of having several streets in the same municipality of the same name, or several houses in the same street of the same number. See *per* Willes, J., in *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 167.

(*c*) The general rule is, that there can be no interference with private property without the making of due compensation see sec. 483 and notes thereto; but the interference here sanctioned is of so trivial a character, that no provision as to compensation is made. The latter part of the section has been added to prevent abuse arising from the unreasonable changing of street names without regard to historical association, or the convenience of persons in identifying property.

shall be expressed to be subject to the approval of the County Judge, and the same shall not take effect unless afterwards so approved.

(*b*) The Judge, on an application by or on behalf of the municipal council, shall name a day, hour and place for considering the same, and for hearing the advocates of the change, and persons who may deem themselves aggrieved thereby and may desire to be heard, and any other persons the Judge may think fit.

(*c*) A copy of the by-law and of the Judge's appointment shall be served on the registrar or deputy registrar of the registry division at least two weeks before the time named, and shall be published once in the *Ontario Gazette* at least two weeks before the time so named, and at least weekly for four weeks in such other newspaper or newspapers as the Judge directs.

(*d*) If the Judge approves of the change he shall certify to that effect, and his certificate shall be filed with the by-law in the registry office of the registry division in which the territory lies. The change shall take effect from the date of the registration of the certificate and not before. 50 V. c. 29, s. 26.

Levels of Cellars—Plans.

Ascertaining levels of cellars, etc.

32. For ascertaining and compelling owners, tenants and occupants, to furnish the council with the levels of the cellars heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the municipality, (*d*)

(*d*) It has been held that authority to a municipal corporation "to repair and keep in order its streets," enabled the corporation, without special grant, to construct drains and sewers. See *Dillon* on Municipal Corporations, 3rd ed. sec. 806. So it has been decided in Massachusetts, that authority "to make needful and salutary by-laws," or perhaps authority "to make regulations for the public health," in the absence of more specific power, would enable a city corporation to construct a common sewer, and subject the owners of land abutting, and who use the sewer to contribution for expenditure. *Boston* v. *Shaw*, 1 Metc. (Mass.) 130; and it was held that the assessment in respect thereto was valid, although the greater part of one lot assessed was lower than the bottom of the sewer, as it might and probably would be graded so as to receive as much benefit as other lots. *Downer* v. *Boston*, 7 Cush. (Mass.) 277;

such levels to be with reference to a line fixed by the by-laws;

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see also *Wright* v. *Boston*, 9 Cush. (Mass.) 233; *People* v. *Brooklyn*, 6 Barb. (N. Y.) 209; *Patton* v. *Springfield*, 99 Mass. 627. But in order that there may be uniformity, power is by this sub-section given to pass by-laws for ascertaining and compelling owners, tenants and occupants to furnish councils with the level of the cellars dug or constructed along the streets. A municipal corporation is not liable to a civil action for neglecting to pass a by-law and provide for some plan for draining the municipality or some part thereof. *Mills* v. *Brooklyn*, 32 N. Y. 489; *Wilson* v. *New York*, 1 Denio. (N. Y.)595; *Child* v. *Boston*, 4 Allen (Mass.) 41: *City Council* v. *Gilmer*, 33 Ala. 116; *Carr* v. *Northern Liberties*, 35 Pa. St. 324; nor for any want of efficiency in the plan adopted, *Lynch* v. *Mayor*, 76 N. Y. 60; *Child* v. *Boston*, 4 Allen (Mass.) 41; *Mills* v. *Brooklyn*, 32 N. Y. 489; *Barry* v. *Lowell*, 8 Allen (Mass.) 127; *Flagg* v. *Worcester*, 13 Gray (Mass.) 601; *Dermont* v. *Detroit*, 4 Mich. 135; *Carr* v. *Northern Liberties*, 35 Pa. St. 324; see further note *e* to sub-s. 11. A corporation may be said to act judicially in selecting and adopting the plan on which a public work shall be constructed; yet as soon as it begins to carry out that plan, it acts ministerially, and is bound to see that the work is done in a reasonably safe and skilful manner. See *Dillon* on Municipal Corporations 3rd ed., sec. 1048 note. A municipal corporation would act judiciously in insisting on having drains made under the direction of their officers and by their own workmen and contractors, instead of the private proprietors, for it would not do to allow all persons to break into a main sewer and make drains at their discretion. Besides the inconvenience the health of the community would suffer from such a course, for the nuisance occasioned by defective drainage may often give rise to a widespread evil, injuring many more than the persons on whose premises the cause of the nuisance exists. It seems a necessary policy, therefore, for such a corporation to keep the matter in their own hands. But then, if the corporation does for such good purposes prevent proprietors from making the drains they require, and oblige them to have them done by the corporation engineer and contractors, it is manifestly just and necessary that the corporation should see that the work is done as it ought to be. *Per* Robinson, C. J., in *Reeves* v. *Toronto*, 21 U. C. Q. B. 160. Where a drain was so unskilfully constructed by the corporation contractors as not to carry off the water, but to carry filth from the main sewer into plaintiff's cellar which for months he had endured, it was held that he was entitled to sue the corporation for the recovery of substantial damages, though no by-law for the making of the drain was proved. *Ib.* See further *Van Pelt* v. *The City of Davenport*, 20 Am. 622; *Smith* v. *New York*, 66 N. Y. 295; *Ashley* v. *Port Hudson*, 35 Mich. 296. So where the drain, though properly constructed, was not kept cleaned, whereby it became choked up and the overflow ran into the plaintiff's premises. *Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144; see further *Scroggie* v. *Guelph*, 36 U. C. Q. B. 534; *Bathurst* v. *Macpherson*, 4 App. Cas. 256. So if, in the construction of a drain by corporation contractors, quantities of earth be thrown up and permitted to continue, so that in times of rain mud and water are driven on a person's premises, he

Compelling the furnishing of ground or block plan of buildiugs to be erected.

33. For compelling to be deposited with an officer, to be named in the by-law, before commencing the erection of any building, a ground or block plan of such building, with the levels of the cellars and basements thereof, (*e*) with reference to a line fixed by the by-laws; 46 V. c. 18, s. 496 (37, 38).

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is entitled to sue the corporation for damages. *Farrell* v. *London*, 12 U. C. Q. B. 343; see also *Jones* v. *Bird*, 5 B. & Al. 837: *Drew* v. *New River Co.*, 6 C. & P. 754; *Grocers' Co.* v. *Donne*, 3 Bing. N. C. 34; *Coe* v. *Wise*, 7 B. & S. 831; but see *Ward* v. *Lee*, 7 E. & B. 426; *Clothier* v. *Webster*, 12 C. B. N. S. 790. Where a private drain connecting with a street drain was obstructed by the act of a third party and there was no complaint as to the construction or sufficiency of the street drain, and when the plaintiff though aware of the obstruction did not give any notice to the corporation of the existence thereof it was held that the corporation was not liable. *McConkey* v. *Brockville*, 11 O. R. 332, followed in *Welsh* v. *St. Catharines*, 13 O. R. 369. Without positive legislation a grave doubt may be expressed as to the absolute right of the conservators of a highway to flood a man's land and destroy his property, even if no other method of drainage be attainable. *Per* Hagarty, J., in *Perdue and Chinguacousy*, 25 U. C. Q. B. 61, 65, 66: "I cannot conceive what right they (a township council) can have to drain all the surface waters of that township, or of any particular area up against the land of another, and to drown it in part, or altogether to the destruction of his farm, although they may have done their work in the most skilful and scientific manner, and although it may have been absolutely necessary to drain in this manner for the making of a good road." *Per* Wilson, J., in *Rowe* v. *Rochester*, 29 U. C. Q. B. 590-595. The plaintiff's land was overflowed by the water of a stream which was the natural drain for the surrounding country, but the defendants used it to a small extent for the drainage of the town. It was found that the flooding would not have been occasioned by the water brought down through the defendants user of the stream, but that water brought down from the area drained apart from the defendants user would have alone caused the damage. Held, that the defendants were not liable. *Law* v. *Niagara Falls*, 6 O. R. 467. A municipal corporation can acquire the right to turn a stream of water upon the lands of another to the injury thereof, only by an exercise of eminent domain. *Pettigrew* v. *Evansville*, 23 Wis. 223; 3 Am. 50; see also *Smith* v. *Washington*, 20 How. (U. S.) 135; *Hildreth* v. *Lowell*, 11 Gray (Mass.) 345; *Stainton* v. *Metropolitan Board of Works*, 23 Beav. 225; 3 Jur. N. S. 257; *Caton* v. *Lewisham*, 5 B. & S. 115; *Aurora* v. *Reed*, 11 Am. 1; *Ruskin* v. *St. Joseph*, *Ib.* 463; *Darby* v. *Crowland*, 38 U. C. Q. B. 338; *Coghlan* v. *City of Ottawa*, 1 App. R. 54; *Hoyt* v. *Hudson*, 9 Am. Rep. 473; *Imler* v. *Springfield*, 55 Mo. 119; *Kobs* v. *Minneapolis*, 22 Min. 159.

(*e*) Under sec. 76 of the Metropolis Local Management Act, 18 & 19 Viet. c. 120, every person, before beginning to lay or dig the foundation of any new house or building, &c., is required to give seven days' notice in writing to the vestry, &c. The same section

Sewerage and Drainage.

34. For charging all persons who own or occupy property which is drained into a common sewer, or which by any by-law of the council is required to be drained into such sewer, (*l*) with a reasonable rent for the use of the same; and for

Charging rent for sewers.

provides that every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with the Act, and as the vestry, &c., shall order; also that every such drain shall be made in such direction, manner and form, and of such materials and workmanship, and with such branches thereto, and as the vestry, &c., shall order; and that if the house, building or drain, &c., be begun, erected, made or provided in any respect contrary to the order of the vestry, &c., it shall be lawful for the vestry, &c., to cause such house or building to be demolished, &c. It was held that there was no power to demolish without first giving the party guilty of the omission an opportunity to be heard. *Cooper* v. *Board of Works for Wandsworth District*, 14 C. B. N. S. 180. No man shall be condemned in person or property without an opportunity of being heard in his defence. See *Rex* v. *Cambridge*, 1 Str. 557; *Rex* v. *Benn*, 6 T. R. 198; *Harper* v. *Carr*, 7 T. R. 270; *Capel* v. *Child*, 2 C. & J. 558; *Hammond* v. *Bendyshe*, 13 Q. B. 869; *Painter* v. *Liverpool Oil Gas Co.*, 3 A. & E. 433; *The Hammersmith Case*, 4 Ex. 87. Such condemnation would be contrary to the principles of natural justice. *Bullen* v. *Moodie*, 13 U. C. C. P. 126; affirmed, *Ponton* v. *Bullen*, 2 E. & A. 379; *Switzer* v. *Brown*, 20 U. C. C. P. 193; *Reg.* v. *Cheshire Line's Committee*, L. R. 8 Q. B. 344; see also 3 F. & F. 548, *et seq.*, note. "The objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam (says God) where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also." *Per* Fortescue, J., in *Rex* v. *Cambridge*, 1 Str. 566, cited by Byles, J., in *Cooper* v. *Board of Works for Wandsworth District*, 14 C. B. N S. 195; *Rutherfords' Case*, 13 Am. 655; *Lovering* v. *Dawson*, L. R. 10 C. P. 711. The 18 & 19 Vict. cap. 120, was held not to apply to a case of the mere removal of a building. *Major* v. *Park Lane Co.*, L. R. 2 Eq., 453.

(*l*) The power is to charge not only all persons who own or occupy property which is drained into a common sewer, but "*which*, by any by-law of the council, *is required to be drained* into such sewer," whether drained or not. In England it has been held that all persons whose property derives any advantage from the works of commissioners of sewers, may be assessed in respect of that property. *Soady* v. *Wilson*, 3 A. & E. 248. Where a district within one commission of sewers was divided into separate levels, each drained by a separate line of sewers and deriving no benefit from the sewers in the others, each level was required to be separately rated. *Reg.* v. *Tower Hamlets Commissioners*, 9 B. & C. 517. And it was held that the party sued might shew, notwithstanding the decision of the com-

regulating the time or times and manner in which the same is to be paid ;

Acquiring land in another municipality for drainage purposes.

35. For accepting or purchasing any land in any other municipality which may be required for preventing such city, town or incorporated village, or any part thereof, being flooded by the surface or other waters flowing from such other municipality into such city, town or incorporated village, and for providing an outlet for such waters through any other municipality, and for opening, making, preserving and improving drains, sewers and water-courses in the lands so acquired ; Provided always that the consent of the municipality in which the lands to be taken are situate shall be obtained before the powers conferred by this sub-section shall be exercised ; 46 V. c. 18, s. 496 (42, 43).

Proviso.

User of Streets.

Regulating traffic on streets and width of wheels.

36. For regulating the conveyance of traffic in the public streets (*n*) and the width of the tires and wheels of all

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missioners, that he derived no benefit from the sewer as a defence to the action. *Stafford* v. *Camston*, 2 B. & B. 691. It was also held under the English Acts that it was not alone sufficient to justify an assessment to the sewer rate that the property should derive some benefit from the drainage ; but it was also necessary that there should be an occupier of the property assessed. *Neave* v. *Weather*, 3 Q. B. 984 ; *Tracey* v. *Taylor*, *Ib.*, 966. A tenement in the King's Dockyard, deriving a benefit from public sewers, and occupied by an officer of the Government paying no rent, was held subject to sewerage rate. *Netherton* v. *Ward*, 3 B. & Al. 21. The power is to charge "a reasonable rent for the use of" the sewer. An amercement on a township generally, and a distress on one of the parties liable, by commissioners of sewers, was held good. *Ramsay* v. *Nornabell*, 11 A. & E. 383. But it was held that no distress could be levied for any such purpose within the precincts of a royal palace, occupied as the residence of the Sovereign. *Attorney-General* v. *Donaldson*, 10 M. & W. 117. The owner or occupier of property drained, or required to be drained, by a sewerage by-law, may legally be allowed to commute by paying a fixed sum in gross, in discharge of the annual rental. *In re McCutchon* v. *Toronto*, 22 U. C. Q. B. 613. The charge is a personal one. *Sawyer* v. *Vestry of Paddington*, L. R. 6 Q. B. 164 ; *Vestry of St Giles, Camberwell* v. *Weller*, *Ib.* 168 n; *Sheffield* v. *Board of Works*, 1 Ex. D. 395 ; *Board of Works* v. *Goodwin*, *Ib.* 400 ; see further, note *a* to sub-s. 48 of sec. 489.

(*n*) It would seem that the municipal council may pass by-laws regulating the rate of speed allowable in the public streets, the route over which omnibuses may pass, and the time of day at which particular streets may be used for particular purposes. *Commonwealth* v. *Stodder*, 2 Cush. (Mass.) 562 ; *Commonwealth* v. *Robertson*, 5 Cush.

vehicles used for the conveyance of articles of burden, goods, wares or merchandise, (*o*) and for prohibiting heavy traffic, and the driving of cattle, sheep, pigs, and other animals in certain public streets and places to be named in the by-law; 47 V. c. 32, s. 14.

37. For prohibiting or regulating the practice of coasting or tobogganing on the public streets; (*p*) 48 V. c. 39, s. 19.

(Mass.) 438; *Vanderbilt* v. *Adams*, 7 Cowen (N.Y.) 349-352; *Washington* v. *Nashville*, 1 Swan. (Tenn.) 177. They may pass by-laws regulating the removal of buildings, and the temporary use of the streets for that purpose. *Day* v. *Green*, 4 Cush. (Mass.) 433-437. They may prevent the unnecessary obstruction of streets and crossings by railway cars, *Davis* v. *New York*, 14 N. Y. 506; and also prohibit the use of steam, and regulate the speed of such cars. *Donnaher* v. *State*, 8 Sm. & Mar. (Miss.) 649; *Railroad Co.* v. *Buffalo*, 5 Hill (N.Y.) 209; *Rentz* v. *Long Island R. W. Co.*, 13 Barb. (N.Y.) 646, unless there be something in the special charter of the company or general law of the land to the contrary. *State* v. *Jersey City*, 5 Dutch. (N.J.) 170. In England legislative sanction is necessary to enable a company to occupy the streets for a horse or street railway. *Reg.* v. *Train*, 9 Cox. 180; *Galbreath* v. *Armour*, 4 Bell App. C. 374: see also *Reg.* v. *Gas Co.*, 2 E. & E. 651: *Reg.* v. *Charlesworth*, 16 Q. B. 1012. So in the United States. *Boston* v. *Richardson*, 13 Allen (Mass.) 146; *City Railroad Co.* v. *Memphis*, 4 Coldw. (Tenn.) 406. The legislature may authorize municipal councils to give or withhold an absolute assent to such a use of their streets, or provide for use on certain conditions. See *Dillon* on Municipal Corporations, 3rd ed., sec. 719. But direct authority to a company to carry passengers over the streets of a city does not exempt the company from a certain amount of municipal control in the conduct of its business. *Frankford Passenger Co.* v. *Philadelphia*, 58 Pa. St. 119; *State* v. *Herod*, 29 Iowa 123; *City Railroad Co.* v. *Louisville*, 4 Bush (Ky.) 478. County councils are now expressly empowered to provide by by-law for the making of a double track during the season of sleighing. Rev. Stat. c. 197; see further note *p* to sub-s. 27 of this section.

(*o*) A by-law of a town regulating the width of tires but exempting from its operation any waggon conveying lumber or goods from the mill or manufactory thereof if distant from the town more than two miles or any person passing through the town with vehicles loaded with the said articles was held bad as discriminating against residents of the town. *Reg.* v. *Pipe*, 1 O. R. 43. See as to wheels of traction engines Rev. Stat. c. 200, s. 4.

(*p*) In the United States attempts have been made to charge municipal corporations with liability for injuries sustained by reason of coasting upon streets. Two classes of cases arise (*a*) where the recovery is sought on general ground that coasting renders the street unsafe and so is a defect which the city should remedy. Upon this it was held in several of the States that no such liability exists. See *Faulkner* v. *Aurora*, 35 Ind. 130; *Shepherd* v. *Chelsea*, 4 Allen 113; *Pierce* v. *New Bedford*, 129 Mass. 534; *Hutchinson* v. *Concord*, 41

Cab Stands.

Cab stands.

38. For authorizing and for assigning stands for vehicles kept for hire on the public streets and places (*q*) and for authorizing the erection and maintenance of covered stands or booths on the streets, highways and public places for the protection and shelter of the drivers of such vehicles: Provided that no such booth or covered stand shall be placed upon any sidewalk without the previous consent of the owner or lessee of the property fronting, abutting or adjoining such stand or booth;

Proviso.

Telegraph Poles.

Telegraph poles.

39. For regulating the erection and maintenance of telegraph and telephone poles and wires within their limits (*r*);

Vt. 271; *Ray* v. *Manchester*, 46 N. H. 59; *Lafayette* v. *Timberlake*, 88 Ind. 330; *Calwell* v. *Boone*, 51 Iowa 687. In *Faulkner* v. *Aurora*, it was also held that the city would neither be liable because of its failure to prohibit coasting by ordinance, nor for the failure of its officers to enforce an ordinance prohibiting coasting on streets.—(*b*) Where the city licenses coasting generally, or sets aside particular streets for that purpose. In such cases it is sought to charge the corporation as having licensed a nuisance. In *Baltimore* v. *Marriott*, 9 Md. 160, the city was held liable on that ground, and in *Shultz* v. *Milwaukee*, 49 Wis. 254, is a dictum to the same effect. The contrary was held in *Burford* v. *Grand Rapids*, 18 No. West Rep. 571; 29 Alb. L. J. 263; *Steele* v. *Boston*, 128 Mass. 583. See *Morrill* on Negligence in the case of Highways 160.

(*q*) When it was admitted that a by-law was within the powers of the council under this provision the court refused to quash the by-law on the ground alleged that the stand interfered with the view of the falls from the hotel; that the manure was offensive and the noise of the hackmen a nuisance, these being matters of municipal regulation. *Colborne* v. *Town of Niagara Falls*, 9 O. R. 168.

(*r*) This sub-section was introduced in 1881 by 44 Vict. c. 24, s. 14. There are two general Acts respecting telegraph companies which affect this province, one a Dominion Act (R. S. C. c. 132) and the other an Ontario Act (Rev. Stat. c. 158). Both these Acts give general powers to carry the lines along public roads and highways, and to erect necessary fixtures, including posts, &c., for the wires, provided the same are not so constructed as to "incommode the public use of such roads or highways, or to impede the free access to any house or other building erected in the vicinity of the same." The Dominion Act expressly provides that the word "telegraph" shall not be held to include the word "telephone." Sec. 10. It is difficult to say how far the municipal authority can regulate the erection of telegraph poles; but with respect to telephone poles the case is different. The Bell Telephone Co. was incorporated by 43 Vic. c. 67 (D.) for the purpose of establishing lines in several pro-

Children Riding behind Vehicles.

40. For preventing children from riding on the platform of cars, or behind waggons and other vehicles, and for preventing accidents arising from such causes; 46 V. c. 18, s. 496 (46-48). Preventing children from riding behind waggons, etc.

Sale of Tobacco.

41. For licensing and regulating the owners and keepers of stores and shops (other than taverns and shops holding licenses under *The Liquor License Act*) where tobacco, cigars or cigarettes are sold by retail, and for preventing the sale of tobacco, cigars and cigarettes to children under the age of fourteen years, except on the written order of the parent, guardian or employer of the child; Regulating sale of tobacco Rev. Stat. c. 194.

Inspection of Bathing and Boat Houses.

42. For inspecting public bathing houses and boat-houses or premises wholly or partly used for boat-house purposes, and for preventing the use thereof for illegal or immoral purposes. 50 V. c. 29, s. 28. Inspection of bathing and boat-houses.

Markets, etc.

497—(1) No municipality (*s*) shall impose, levy or collect a market fee upon any wheat, barley, rye, corn, oats, or upon any other grain, or upon any hay or other seed, or wool, lumber, lath or shingles, or cordwood or other firewood, or upon Market fees on certain products abolished.

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vinces, but not of connecting two or more provinces by telephone lines, nor was the undertaking declared to be for the general advantage of Canada or of two or more of the provinces; and it was Held that in the absence of these conditions the Act, so far as it professed to confer a right to erect poles in the streets of cities and towns, was invalid. *Reg.* v. *Mohr*, 7 Quebec Law Rep. 183; 2 Cart. 257. In consequence of this decision the company obtained from the Ontario Legislature, by 45 V. c. 71, power to construct and maintain its lines along the sides of and across or under any public highway, &c., with certain restrictions and subject to a provision that the poles should not, in cities, towns, and villages, be carried "along any street without the consent of the municipal council." See also *Bell Telephone Co.* v. *Belleville Electric Light Co.*, 12 O. R. 571.

(*s*) This section applies to municipalities in which market fees are charged on articles brought into the municipality and sold elsewhere than on the market place. See sec. 498 (1), and also to municipalities in which no market fees were imposed prior to 10th March, 1882, but have been imposed subsequent to that date. See sec. 500 and note *b* to sec. 503.

dressed hogs, or cheese, or upon hay, straw or other fodder, that may be brought to market, or to the market place, for sale or other disposal, or upon the person bringing, or the vehicle in which the same is or shall be brought.

When fees may be charged on butter, etc., brought to market.

(2) No market fee shall be charged, levied, or imposed upon or in respect of butter, eggs or poultry brought to market, or upon the market place, for sale, unless a convenient and fit place in which to offer or expose the same for sale shall be provided by the municipality, which shall afford shelter in summer, and shelter and reasonable protection from the cold in winter.

Fees not to be charged on articles delivered in pursuance of prior contract.

(3) When the vendor of any article brought within the municipality in pursuance of a prior contract for the sale thereof, proceeds directly to the place of delivery thereof, under such contract, without hawking the same upon the streets or elsewhere in the municipality, it shall not be lawful to impose, levy or collect a market fee thereon, or in respect thereof, or on the vehicle in which the same is so brought.

When fees not to be charged, though no prior contract.

(4) Where there is no prior contract as mentioned in the previous sub-section, no market fee shall be imposed, levied, or collected upon or in respect of any article brought into any municipality after the hour of ten o'clock in the forenoon, nor on or in respect of any vehicle in which such article is so brought, unless such article is offered or exposed for sale upon the market place of the municipality.

Restriction as to by-laws requiring articles to be weighed or measured.

(5) No by-law shall require hay, straw or other fodder to be weighed, or wood to be measured, where neither the vendor nor purchaser desires to have the same so weighed or measured.

Limit of time for enforced sale of goods at market.

(6) After nine o'clock in the forenoon, between the 1st day of April and the 1st day of November, and after ten o'clock in the forenoon, between the 1st day of November and the 1st day of April, no person shall be compelled to remain on any market place with any article which he may have been exposing or offering for sale in such market place, but may, after the expiration of such hour, proceed to sell such article elsewhere than in or on said market place; Provided that such person has paid the market fee on or in respect of such article, or the vehicle in which the same is contained.

(7) No market fees shall be imposed by any municipality higher than those contained in the following scale: Scale of market fees.

Upon articles brought to the market place in a vehicle drawn by two horses, upon which fees may be imposed, not more than ..... 10 cents.
Upon articles brought to the market place in a vehicle drawn by one horse, not more than .. 5 cents.
Upon articles brought to the market place by hand or in any basket or vessel, not more than .... 2 cents.
Upon or in respect of live stock driven to or upon the market place for sale as follows:
Every horse, mare, or gelding, not more than .. 10 cents.
Every head of horned cattle, not more than .... 5 cents.
Every sheep, calf, or swine, not more than .... 2 cents.

(8) No fee shall be imposed or levied by any municipality for weighing or measuring greater than as follows: Scale of fees for weighing or measuring.

For weighing a load of hay ..... 15 cents.
For weighing slaughtered meat, or grain or other articles exposed for sale, under one hundred pounds ..... 2 cents.
Over one hundred pounds, and up to one thousand pounds ..... 5 cents.
Over one thousand pounds ..... 10 cents.
For weighing live animals, other than sheep or pigs, per head ..... 3 cents.
Sheep or pigs, if more than five, per head ..... 1 cent.
If less than five, for the lot ..... 4 cents.
For measuring a load of wood ..... 5 cents.

(9) Subject to the other provisions of this section, the municipality may regulate the sale by retail in the public streets, or on vacant lots adjacent thereto, of any of the articles herein mentioned, and may regulate traffic in the streets, and prevent the blocking up of the same by vehicles or otherwise. 46 V. c. 18, s. 497. Regulation of sale and traffic.

498.—(1) The preceding section shall not apply to any municipality which shall pass, and so long as it shall keep in force, a by-law providing that the vendors of any articles in respect of which a market fee may, under this Act be lawfully imposed, may, without paying market fees, offer for sale and sell or otherwise dispose of any such articles, at any place Preceding section not to apply where by-law in force allowing sale, except at the market, without payment of fees;

within the municipality, excepting only at and upon the market place or places thereof. (*t*)

but such by-law may impose fees on persons voluntarily using market;

(2) Such by-law may, nevertheless, provide for the imposition and collection of market fees from such vendors of articles in respect of which a market fee may now be imposed, under this Act, as shall voluntarily use the market place for the purpose of selling such articles. (*u*)

and on others taking advantage of market.

(3) The by-law may also provide for the imposition upon and collection of market fees from any person who shall remain or cause his vehicle to remain upon that part of any street immediately adjoining or surrounding or being within 100 yards of the market place, for the purpose of selling upon such street or streets such articles, so as to obtain the advantages of the said market place, but driving through or across such portions of streets shall not of itself be deemed sufficient ground for the imposition of any fee; but this sub-section shall not apply to grain, seeds, dressed hogs or wool.

By-law not to interfere with sales to persons carrying on business in vicinity of market.

(4) The by-law shall not prevent the sale of any such articles to any person carrying on business and having an actual and *bona fide* store, shop, or other similar place of business, on those portions of the streets in the next preceding sub-section mentioned; nor shall the by-law authorize the imposing or levying of any fee in respect of any article so sold, or of any vehicle in which the same is contained.

Restriction on fees.

(5) It shall not be lawful for any municipality passing such by-law to impose a higher tariff or greater fee upon any article or vehicle than was in force or imposed by the municipality on the 1st day of March, 1882.

Fees not to be charged on markets made in streets.

(6) No market fee shall be levied, collected or imposed by any municipality in respect of any market place or market, or any portion of any such market place or market hereafter established, declared or made in, on, or out of any street or

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(*t*) This section applies to municipalities in which market fees are imposed only upon articles offered for sale on the market or on the streets adjacent thereto. See note *b* to sec. 503.

(*u*) The words any person or persons who shall voluntarily come upon the said market-place &c., for the purpose of selling &c., were held not to be identical with or equivalent to the words used in the statute. *Reg.* v. *Reid*, 11 O. R. 242. The conviction was also held bad as differing from both statute and by-law, being for refusing to pay the fees on eight quarters of beef "exposed for sale" whereas the 13th section of the by-law applied only to butchers meat exposed for sale. *Ib.*

part of any street within said municipality: Provided always that this sub-section shall not apply to so much of any street as immediately adjoins and abuts upon any market square, either now or hereafter established as a market place. 46 V. c. 18, s. 498.

Preceding section not to apply when no fees are charged.

499. The preceding section shall not apply to any municipality where no market fees were charged or imposed on the 10th day of March 1882, but sections 497, 500, and 501 shall apply to such municipality in the event of market fees being thereafter charged or imposed therein. (*v*) 46 V. c. 18, s. 499.

Power to regulate sales when no fees are charged.

500. Nothing in the preceding sections contained shall prevent any municipality wherein no market fees are imposed or charged from regulating the sale and the place of sale of any articles within the municipality to the same extent as it might do before the 10th day of March, 1882: Provided always that market fees within the meaning of this section shall not include fees for weighing or measuring; Provided further, that after nine o'clock in the forenoon, between the 1st day of April and the 1st day of November, and after ten o'clock in the forenoon, between the 1st day of November and the 1st day of April, no person shall be compelled to remain on, or resort to, any market place with any articles which he may have for sale, but may, after the expiration of such hour, sell or dispose of such articles elsewhere than in or on said market-places. (*w*) 46 V. c. 18, s. 500.

Inconsistent enactments to be of no effect.

501. When and so long as section 497 shall be in force and apply to any municipality, (*a*) so much of any Act or law as may be contrary to, and as shall conflict with the same shall not be in force in or apply to such municipality; and when and as long as section 498 shall be in force in and apply to any municipality, so much of any Act or law as may be contrary to, and as shall conflict with the same, shall not be in force in or apply to such municipality. 46 V. c. 18, s. 501.

Right to lease market fees.

502. Subject to the provisions of the last preceding five sections, every municipality shall have the power to sell, assign, or lease its market fees. 46 V. c. 18, s. 502.

(*v*) See note *b* to sec. 503.

(*w*) See note *b* to sec. 503.

(*a*) See note *s* to sec. 497, and note *b* to sec. 503.

Market by-laws.

503. The council of every city, town and incorporated village may, subject to the restrictions and exceptions contained in the last preceding six sections, (*b*) also pass by-laws:

Establishing markets.

1. For establishing markets; (*c*)

(*b*) By sub-s. 1 of sec. 497 no market fee is to be imposed on wheat and other articles in that sub-s. specified. By sub-s. 2 a market fee can only be imposed on the articles therein mentioned if there is a convenient sheltered place in which to offer them for sale. By sub-s. 3 a market fee cannot be imposed on articles brought into the municipality in pursuance of a prior contract and delivered to the purchaser without being hawked about the streets or elsewhere in the municipality. By sub-s. 4 a market fee cannot be imposed on articles brought into the municipality after 10 a.m. unless they are exposed for sale on the market place. By sub-s. 5 the municipality cannot compel certain articles to be weighed or measured when neither party to the sale desires the same to be weighed or measured. By sub-s. 6 persons cannot be compelled to remain on the market place after the hours therein mentioned, provided the market fees have been paid. Sub-ss. 7 and 8 limit the market fees and the fees for weighing and measuring. By sub-s. 9 the municipality may subject to the above provisions regulate sales and traffic in the streets. By sec. 501 so long as sect. 497 is in force in the municipality conflicting laws are not to apply. By sec. 498 municipalities which do not impose market fees on persons not using the market, or remaining on the street within 100 yards thereof, are exempt from the restrictions imposed by sec. 497, but such municipalities are not to impose higher fees than were in force on the 1st of March, 1882, and no market fees are to be imposed on any market hereafter made on, or out of any street. By sec. 501 so long as sec. 498 is in force in a municipality conflicting laws are not to apply. Sec. 499 makes provision for municipalities in which no fees were charged on 10th March, 1882. Sec. 500 gives power to regulate sales and the place of sales in municipalities in which no market fees are charged. By sec. 502 power is given to sell, assign, or lease market fees.

(*c*) Power to establish a market authorizes, as a necessary incident, the acquirement of land on which to erect market buildings. *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Caldwell* v. *Alton*, 33 Ill. 416; *People* v. *Lowber*, 28 Barb. (N.Y.) 65. So it is incident to the general power to decide on the cost, dimensions, etc. *Peterson* v. *New York*, 17 N. Y. 449; *Smith* v. *Newbern*, 16 Am. 766; *Attorney-General* v. *Cambridge*, L. R. 6 H. L. C. 303; but see also *Spaulding* v. *Lowell*, 23 Pick. (Mass.) 71, 80. The establishment of a market ought not to be in a public street. See note *b* to sub-s. 10 of sec. 495, but see sec. 498, sub-ss. 3 and 6. Where the defendants leased to plaintiff the market fees of a wood market, established in one of the public streets of the city, covenanting against their own interference, &c. Held, that the market being fixed in a public highway, which is *prima facie* for purposes of public travel, the exercise of the rights incident to such market must be subordinate to the primary purposes of the highway, and that plaintiff could not recover damages for interference by the user of the highway by

2. For regulating all markets established and to be established ; (*d*) the places, however, already established as markets in the municipality, shall continue to be markets, and shall

Regulating markets.

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the public. *Reynolds* v. *Toronto*, 15 U. C. C. P. 276. So long as the market is used, it is the duty of the municipality to keep the same in a reasonable state of repair. *Savannah* v. *Cullens*, 38 Geo. 334; 2 Withrow 132. Where the lessee of market fees received fees as such, he cannot refuse to perform his contract with the corporation on the ground that the latter had no power to erect the market. *Board of Police of London* v. *Talbot*, 3 U. C. Q. B. 311.

(*d*) The regulation of fairs and markets has for a long time been the subject of municipal control in England and the United States. See note *d* to sec 495, sub-s. 10 (*b*). Regulation must of necessity include the appropriation of one or more parts of the market for one purpose, and another part or parts for other purposes; of providing, that free passage through the market be kept open for ready access to shops, stalls, or other places where different commodities are exposed for sale, *Per* Draper, C. J., in *Kelly* v. *Toronto*, 23 U. C. Q. B. 426. But the right, under the power to regulate, to restrict the sale of commodities to the public market is open to doubt. Some of the subsequent sub-sections expressly empower municipal councils to restrict the sale of commodities therein mentioned to the place established as a market place. From this it might be argued that, except as to the commodities mentioned, the power to restrict the sale to the market place does not exist. See *New Orleans* v. *Stafford*, 21 Am. 563. On the other hand, in some of the English statutes exemptions are made in favour of the sale in the owner's shop of certain commodities specified. From this it might be argued that, except as to these, there was power to restrict sales to the market place. See *Howard* v. *Lupton*, L. R. 10 Q. B. 598. The general question is surrounded with difficulties. "The fixing of the place and times at which markets shall be held and kept open, and the prohibition to sell at other places and times, is among the most ordinary regulations of a city or town police, and would naturally be included in the general power to pass by-laws relative to the public markets. If the corporation had not the power in question it is difficult to see what useful purpose could be effected or what object was intended by the grant of the power to pass by-laws relative to the public markets. The mere regulation of the building and of the stalls of those who might choose to go there instead of elsewhere to sell there market provision would be an idle and useless power, and of no moment towards the good government of the village." *Bush* v. *Seabury*, 8 Johns. (N.Y.) 418; see also *Pearce* v. *Bartrum*, 1 Cowp. 269. The same doctrine is maintained in *Davenport* v. *Kelly*, 7 Iowa 102: *Buffalo* v. *Webster*, 10 Wend. (N.Y.) 100; *In re Nightingale*, 11 Pick. (Mass.) 16; *Raleigh* v. *Sorrell*, 1 Jones (N. Car.) 49; *Stokes* v. *New York*, 14 Wend. (N. Y.) 87; *LePlaire* v. *Davenport*, 13 Iowa 210. Such ordinances are sustained on the ground that they are not in restraint of trade, but in regulation of it. *Wensboro* v. *Smart*, 11 Rich. (S. Car.) Law, 551; see also *St. Louis* v. *Jackson*, 25 Mo. 37. But it has been held by equally good authority, that the power to regulate markets can only extend to the market limits, and that these limits cannot be made to

retain all the privileges thereof until otherwise directed by

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extend throughout the city. *Peters* v. *Board of Police of London*, 2 U. C. Q. B. 543; *Farquhar* v. *Toronto*, 10 U. C. C. P. 379; *Paldwell* v. *Alton*, 33 Ill. 416; see also *Dunham* v. *Rochester*, 5 Cow. (N.Y.) 462; *Shelton* v. *Mobile*, 30 Ala. 540; *St. Louis* v. *Webber*, 44 Mo. 547; *LePlaire* v. *Davenport*, 13 Iowa 210; *Davenport* v. *Kelly*, 7 Iowa 102; *Ash* v. *People*, 11 Mich. 347. So under an ordinance "to erect market houses, establish markets and market places, and provide for the government and regulation thereof," it was held that the council had no power to fix upon one market place and prohibit all persons at all hours of the day from selling fresh meat elsewhere. *Bloomington* v. *Wahl*, 46 Ill., 489; 2 Withrow 150; see also *Bethune* v. *Hughes*, 28 Ga. 560; *St. Paul* v. *Laidler*, 2 Minn. 190; *St. Louis* v. *Webber*, 44 Mo. 547; *St. Paul* v. *Poulter*, 12 Minn. 41; *Rochester* v. *Pettinger*, 17 Wend. (N.Y.) 265. A by-law enacting "that no butcher or other person shall cut up or expose for sale any fresh meat in any part of the city, except in the shops and stalls in the public markets, or at such places as the standing committee on public markets may appoint," was held good. *In re Kelly and Toronto*, 23 U. C. Q. B. 425. This, in the same Court, was afterwards affirmed in *Fennell and Guelph*, 24 U. C. Q. B. 238, and treated as settled in that Court. *Snell and Belleville*, 30 U. C. Q. B. 91. In England and Ireland most of the markets are franchises, extending over the whole or greater part of the towns in which situate. *Cork* v. *Shinkwin*, Sm. & Bat. 395. And as the erection of a new market is *prima facie* injurious to an old one, there is, in the case of a market by prescription, the right to prevent the erection of a new market "within the common law distance of the old market." *Islington Market Case* 3 Cl. & F. 513. And in such cases there is the right, so long as there is room in the market for the sale of articles ordinarily sold there, to prevent sales elsewhere. *Prince* v. *Lewis*, 5 B. & C. 363. See further *Mosley* v. *Walker*, 7 B. & C. 40; *Mayor of Dorchester* v. *Ensor*, L. R. 4 Ex. 335; *McIlole* v. *Davis*, 1 Q. B. D. 59; *Great Eastern R. W. Co.* v. *Goldsmid*, 9 App. Cas. 927; *Attorney-General* v. *Horner*, 11 App. Cas. 66. A right by custom to exclude persons from selling marketable articles in their shops on market days without the limits of the market has, therefore, been held valid. *Macclesfield* v. *Pedley*, 4 B. & Ad. 397. A sale, by sample, on a market day near to but without the limits of the market, has, however, been held not to be a disurbance of the market, unless done designedly and with the intention to evade payment of toll. *Brecon* v. *Edwards*, 1 H. & C. 51. If the grantee of a market under letters patent from the Crown, suffers another to erect a market in his neighbourhood, and use it for the space of twenty-three years without interruption, he is, by such use, barred of his action for disturbance of the market. *Holcroft* v. *Heel*, 1 B. & P. 400. A market held in the same town with an old market, if held on the same day, is a disturbance by intendment of law: *Dorchester* v. *Ensor*, L. R. 4 Ex. 335; but if held on a different day, is only evidence of disturbance. *Ib.* By 37 & 38 V. c. 85, s. 8, (Imp.) the corporation of Edinburgh (who were grantees of a market in Edinburgh) "may cover, in a suitable and convenient manner, the fruit and vegetable market place, and improve and better adapt the same for

competent authority ; (*e*) and all market reservations or

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the purposes of such market, and for the accommodation of parties using the same, and of the public, &c. : Provided always, that the ground floor only of such market-place shall be used for such fruit and vegetable market, and that all vacant portions of such market-place, whether on the ground floor or above the same, and all vacant and unlet stands, stalls, and shops in or on such market-place, may be let or used by the corporation for such purposes and for such rents or sales as to them shall seem proper": Held, that the corporation were not entitled to exclude members of the public from the covered portion of the market during market hours and devote the building to other purposes. *Magistrates of Edinburgh* v. *Blackie*, 11 App. Cas. 665. Where a grant of market is not confined to any particular locality, the grantee may, from time to time, change the site in order to suit his own convenience ; but it is an implied condition of the exclusive privilege that he shall provide a market-place, and that implied condition is satisfied so long as he gives reasonable accommodation to those members of the public who use the market either as buyers or sellers, and the extent of the accommodation which must be afforded in each case must vary with the circumstances. *Per* Lord *Watson*, *Ib.* Some of the decisions under English market Acts may be here noticed. By a market Act every person who sold or exposed for sale at any place within the limits of the Act (other than in the existing market place, or the market house or market places to be established under the Act, or in his own dwelling house, or in any shop attached to and being part of a dwelling house) any article in respect of which tolls were authorized to be taken, other than eggs, butter and fruit, was subjected to a penalty : Held, that a vessel moored to a wharf was not a shop within the meaning of the exemption. *Wiltshire* v. *Baker*, 11 C. B. N. S. 237. But to bring a case under the exemption, the shop need not be attached to any part of the dwelling house of the party himself. *Wiltshire* v. *Willett*, 11 C. B. N. S. 240. See further *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316 ; 10 B. & S. 309. In order to exempt from a penalty under this Act, a party must be shewn to have sold the marketable articles in what is really his own private shop, and not in such a way as to constitute a different market from the legal one. *Pope* v. *Whalley*, 6 B. & S. 303 ; *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690 ; *Dowling* v. *Byrne*, L. R. 10 Ir. C. L. 135 ; *Dolan* v. *Kavanagh*, *Ib.* 166. A horse was held to be "an article" within the meaning of the statute. *Llandaff, &c., Market Co.* v. *Lynden*, 8 C. B. N. S. 515. A person who sold fruit and fish, which are marketable articles, from door to door, within the prescribed limits, was held not thereby to have incurred the penalty. *Caswell* v. *Cook*, 11 C. B. N. S. 637. A party who bought vegetables from a wholesale dealer in the market, who had previously paid fees thereon, and afterwards offered them for sale in the streets, was in a subsequent case held liable to fees. *Black* v. *Sackett*, 10 B. & S. 639. Upon the construction of a local Act establishing a market for corn, &c., in the city of Cork and its suburbs, it was held that fees were not leviable upon a sale made in the vendor's own house within the city of corn then being outside of the city and its suburbs. *Webber* v. *Adams*, 5 Ir. C. L. R. 146.

(*e*) Authority to establish and regulate markets is a continuing

Old markets continued.

appropriations heretofore made in any such municipality shall continue to be vested in the corporation thereof;

Regulating vending in streets, etc.

3. For preventing or regulating the sale by retail in the public streets, or vacant lots adjacent thereto, (*f*) of any meat, vegetables, grain, hay, fruit, beverages, small-ware and other articles offered for sale; (*g*) 46 V. c. 18, s. 503 (1-3).

Sale of grain meat, farm produce, small ware, etc.

4. For regulating the place and manner of selling (*h*) and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description,

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power. Its exercise at one period by establishing a market place and erecting a market house in a particular locality will not prevent the municipal council from removing such building or abandoning such locality for market purposes. *Gall* v. *Cincinnati*, 18 Ohio St. 563. Where, according to the grant of a market, it was to be held in a town, the grantee might from time to time remove the place for holding it according to the convenience of the inhabitants for the time being. *Dixon* v. *Robinson*, 3 Mod. 108; *Curwen* v. *Salkeld*, 3 East. 538; *Rex* v. *Cotterill*, 1 B. & Al. 67; *Wortley* v. *Nottingham Local Board*, 21 L. T. N. S. 582. *Magistrates of Edinburgh* v. *Blackie*, 11 App. Cas. 665. And this applies, although the limits of the town be afterwards extended and the market established within the extended limits. *Mayor, &c., of Dorchester* v. *Ensor*, L. R. 4 Ex. 335. But this is subject to the rights of any persons owning property adjoining the site of the old market. *Ellis* v. *Corporation of Bridgenorth*, 4 L. T. N. S. 112; 2 J. & H. 67; 15 C. B. N. S. 52.

(*f*) There cannot be much doubt as to the meaning of this sub-section. Besides the word "regulate," used in the previous sub-section, it has the word "prevent." There is a great difference between restraint and regulation. *Green* v. *Mayor of Durham*, 1 Burr. 127, 131; *Andrews* v. *The State*, 8 Am. 8, 15. One can readily understand why there should be power to prevent the sale of the articles mentioned "in the public streets" See note *e* to sub-s. 1 of this section. One can also suggest a good reason why sales should not be in "vacant lots adjacent thereto." See *Nightingale Petitioner, &c.*, 11 Pick. (Mass.) 168; *Commonwealth* v. *Rice*, 9 Metc. (Mass.) 253; *Shelton* v. *Mobile*, 30 Ala. 540; *Wartman* v. *Philadelphia*, 33 Pa. St. 202.

(*g*) "And *other* articles offered for sale." This is so indefinite as to leave a doubt as to what is meant. Such a provision should be more certain in its terms. Probably the general words are controlled by the particular words which precede them. See note *h* to sec. 477.

(*h*) This is the first subsection that provides for regulating "the *place* and manner." Power to regulate the place has been held to include the power to restrict sales to a place such as the market. See note *d* to sub-s. 2 of this section.

smallware and all other articles exposed for sale, (*i*) and the fees to be paid therefor; (*j*) and also for preventing criers and vendors of smallware from practising their calling in the market place, public streets, and vacant lots adjacent thereto; (*k*)

5. For granting annually, or oftener, licenses for the sale of fresh meat in quantities less than by the quarter carcase, and for regulating such sale, and fixing and regulating the places where such sale shall be allowed, and for imposing a

Regulating sale of meat.

(*i*) And all other articles. See note *g* to sub-s. 3. See sub-s. 8.

(*j*) A by-law prohibiting any person bringing produce, articles, commodities, or things to a city market from selling or offering the same for sale within the city limits on their way to market, or without having paid market toll, and before offering such things for sale in the market, was held bad. *Kinghorn and Kingston*, 26 U. C. Q. B. 130. "The statute gives no authority for the passing of a by-law of so wide and general a character as the one now in question, or containing such conditions as it does. The provisions of the statute are specific and limited, and the by-law should be restricted in its operation to the purposes and articles mentioned in the different subsections; and by doing so, the very proper object the municipality had in view would have been effected." *Per* Morrison, J., *Ib.* 134. The same Court afterwards held that a by-law that "no person shall buy, sell or offer for sale any game, fish, poultry, eggs, butter, cheese, grain, vegetables or fruits exposed for sale or marketed within the town *until* the seller has paid the market fees required by by-law No. 161, or has obtained a ticket from the collector of tolls of the market of the town, as provided in the 27th section of by-law No. 161, and before the hour of nine o'clock in the forenoon during the months of June, July and August, and ten o'clock during the rest of the year," was good. *In re Snell and Belleville*, 30 U. C. Q. B. 81, 92. Some changes had been made in the law between the two decisions, but whether sufficient to cause such a change in the decisions may be a question. A person brought sheep to a public house forty yards out of the limits of a market, left them there, went into the market in search of customers, whom he took to the public house, and there sold the sheep. Held, a fraud on the market, for which the seller was liable to an action by the lessee of the market. *Bridgland* v. *Shafter*, 5 M. & W. 375; see further, *Brecon* v. *Edwards*, 1 H. & C. 51; *Blakey* v. *Dinsdale*, 2 Cowp. 661.

(*k*) See note *f* to sub-s. 3 of this section. This provision was held not to be *ultra vires* of the Ontario Legislature as being a regulation of trade and commerce. *Re Harris and Hamilton*, 44 U. C. Q. B. 641. A by-law of a city council providing that no vendor of small ware should practise his calling in a specified market, or in the public streets adjacent thereto was held not defective for not specifying the small ware intended, that being the terms used in the statute; but the by-law was held bad for uncertainty in not specifying the streets intended. "Adjacent thereto," as used in the Act means adjacent to the public streets. *Ib.*

license fee not exceeding $50 in cities and $25 in towns and incorporated villages to be paid for such license, and for enforcing the payment of the same, and for preventing the sale of fresh meat in quantities less than by the quarter carcase, unless by a person holding a valid license and in a place authorized by the council, but nothing herein contained shall affect the powers conferred in the preceding sub-section; (*l*) 46 V. c. 18, s. 503 (5, 6).

Preventing forestalling, etc.

6. For preventing the forestalling, regrating or monopoly of market grains, wood, meats, fish, fruits, roots, vegetables, poultry and dairy products, eggs and all articles required for family use, and such as are usually sold in the market; (*m*)

(*l*) Held, that a by-law passed pursuant to 46 V. c. 18, secc. 503, sub-s. 6 (same as this sub-s.) and the convictions thereunder were not bad because the by-law did not embody or refer to the exceptional proviso as to time mentioned in sec. 500; for that sec. 500 did not refer to the subject of sub-s. 6 of sec. 503, and that apart from that sec. 500 was expressly limited to municipalities wherein no market fees were imposed or charged, whereas here a by-law was in existence imposing such fees and charges. The by-law was also held not to be *ultra vires* but the conviction was held bad because while covering two distinct offences under the same by-law it only imposed one penalty. *Reg.* v. *Gravelle*, 10 O. R. 735. A by-law passed under this sub-section is not subject to the restrictions contained in the preceding six sections. The proper construction of this section is that it is made subject to such restrictions so far as properly applicable and that this sub-section is in the nature of an exception from these general restrictions. *Re O'Meara* v. *Ottawa*, 11 O. R. 603. Affirmed 23 C. L. J. 235.

(*m*) Engrossing or regrating is a common law offence. *Rex* v. *Waddington*, 1 East. 143. It applies only with respect to the necessaries of life. *Pettamberdas* v. *Thackoorseydass*, 7 Moore, N. C. 239. Where several companies and individuals, engaged in the manufacture of salt, entered into an agreement whereby it was stipulated that the several parties agreed to combine and amalgamate under the name of "The Canadian Salt Association," for the purpose of successfully working the business of salt manufacture, and that all parties to it should sell all salt manufactured by them through the trustees of the association and not otherwise, it was held that the agreement was a valid one, and not void as against the old common law offence of engrossing. *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant, 540. "I must conclude that long usage has brought about such a change in the common law since the decision in *Rex* v. *Waddington*, that even if it could be said that the object of the parties to the agreement in question here was to enhance the price of salt, the contract would be neither illegal nor against public policy." Per Strong, V.C., *Ib.* 543. A by-law that "no person shall forestall, regrate or monopolize any market grains, meats, fish, fruits, roots, vegetables, poultry and dairy products within the town," was held

Provided that this sub-section shall not be qualified as respects shops or stalls occupied by butchers or others for the sale of fresh meat in quantities less than by the quarter carcase within the said municipality by anything contained in sections 497 or 500 of this Act. 46 V. c. 18, s. 503 (7); 50 V. c. 29, s. 29.

Regulating hucksters, etc.

7. For preventing and regulating the purchase of such things by hucksters, grocers, butchers or runners; (*n*) 46 V. c. 18, s. 503 (8).

Measuring, etc., certain articles.

8. For regulating the measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel; (*o*) 46 V. c. 18, s. 503 (9); 49 V. c. 37, s. 13.

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good, because it repeats "*the obsolete English Provisions*" enacted in the section, and "*does nothing more.*" *In re Snell and Belleville*, 30 U. C. Q. B. 92; see further, *In re Fennell and Guelph*, 24 U. C. Q. B. 238.

(*n*) A by-law that no butcher, huckster or runner should, between certain hours of the day, buy or contract for any kind of fresh meat or provisions, such as are usually sold in the market, "on the roads, streets, &c., within the town, *or within one mile distant therefrom*," was held bad. *In re McLean and St. Catharines*, 27 U. C. Q. B. 603. "Such a by-law is quite inconsistent with the rights and jurisdiction of the neighboring municipality." *Per* Morrison, J., *Ib.* 604; also so held *In re Snell and Belleville*, 30 U. C. Q. B. 81. A by-law "that before 10 a. m. in May, June, July and August no huckster, butcher, dealer, trader, runner, agent or retailer, or any other person purchasing for export or to sell again, should buy, bargain for, engage, or offer to buy any article of household consumption, brought to the market excepting pork, grain, flour, meal or wool," was, except as to *hucksters* and *runners*, held bad. *In re Fennell and Guelph*, 24 U. C. Q. B. 238. The foregoing were decisions under 29 & 30 Vict. c. 51, s. 296, sub-s. 12. That section was afterwards amended by the addition of the word "butchers" (31 Vict. c. 30, sec. 32), and again by striking out the words "living within the municipality, or within one mile from the outer limits thereof.' 34 Vict. c. 30, s. 2.

(*o*) A by-law to the effect that every person selling meat or articles of provision by retail, whether by weight, count or measure, should provide himself with scales, weights and measures, but that no spring balance, spring scale, spring steelyards, or spring weighing machine should be used for any market purposes, was held valid. *In re Snell and Belleville*, 30 U. C. Q. B. 81. By-laws requiring the weighing or measurement of goods before sale are a valid exercise of municipal power, and are not illegal as in restraint of trade. See *Dillon* on Municipal Corporations, 3rd ed., sec. 390. So the establishment of public weighing scales for hay. *Ib. sec.* 391. See *Reg.* v. *Hollister*, 8 O. R. 750. Power is conferred by this sub-section to provide for the weighing or measuring of cord-wood, but not to enforce delivery or sale in a particular kind of waggon. *Reg.* v.

Penalties for light weight, etc.

9. For imposing penalties for light weight or short count, or short measurement in anything marketed; (*p*) *See* s. 479 (21.)

Regulating vehicles used in market vending.

10. For regulating all vehicles, vessels, and all other things in which anything is exposed for sale or marketed, and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid; (*q*)

Smith, 4 O. R. 401. Upon the conviction of a railway company under the English statute 5 & 6 Will. IV. c. 63, sec. 28, for having in their possession a weighing machine which, upon examination by the inspector of weights and measures, was found to be incorrect; Held, that a machine which, from its construction, was liable to variation from atmospheric and other causes, and required to be adjusted before it was used, was not incorrect upon examination within the meaning of the statute, if examined by the inspector before it had been adjusted. *London and North Western R. W. Co.* v. *Richards*, 2 B. & S. 326. But a weighing machine which has become out of order so as to weigh untruly, is an incorrect weighing machine within the meaning of that statute, although, by making an allowance for the error, the weight of the article could be ascertained truly by it. *Great Western R. W. Co.* v. *Brirrie* 5 B. & S. 928. Scales having shot placed within a ball, which shot may be removed at pleasure, renders the scale an improper instrument of adjustment within the meaning of that statute. *Carr* v. *Stringer*, L. R. 3 Q. B. 433. A spring balance unjust to the *seller* is not within the statute, which is for the protection of the public when purchasing. *Crooke* v. *Shadrake*, L. R. 8 Q. B. 352

(*p*) See previous note.

(*q*) This does not authorize the imposition of tonnage dues on scows, crafts, rafts, railway cars. &c., coming into the municipality merely because they contain firewood, though such firewood may have been brought into the municipality for the purpose of being exposed or offered for sale or marketed for consumption within the municipality. *In re Campbell and Kingston*, 14 U. C. C. P. 285. What the statute authorizes is the regulating the vehicles, vessels, &c., in which anything *is exposed for sale* or marketed and for imposing a reasonable duty thereon. When the commodity is exposed for sale, the power to impose the duty, if it is really given, arises, and if it be intended to impose the duty on the vehicle or vessel, it must be on that in which the article is exposed for sale or marketed in any street or public place. The Legislature never contemplated that, under pretence of passing a by-law to regulate markets, any municipal corporation should have the power of levying a tax on the general commerce of the country merely because a particular town or city happened to be the place where forwarders are in the habit of transhipping commodities from one description of craft to another, and where merchants frequently contract that certain articles in which they deal, shall be delivered, in view of this very practice of transhipment. *Ib.*

11. For selling, after six hours' notice, butchers' meat distrained for rent of market-stalls; (*r*) 46 V. c. 18, s. 503 (10-12). Sale of meat, distrained.

Assize of Bread.

12. For regulating the assize of bread. (*s*) 46 V. c. 18, s. 503 (13 *part*). *See ante* s. 479 (21). Assize of bread.

DIVISION VII.—POWERS OF COUNCILS OF CITIES AND TOWNS.

Respecting Intelligence Offices. *Sec.* 504 (1-5).
" *Police.* *Sec.* 504 (6, 7).
" *Industrial Farms—Exhibitions.* *Sec.* 504 (8-10).

(*r*) Trespass lies for setting tables on a market place for the sale of goods without the permission of the owners. *Norwich* v. *Swann*, 2 W. Bl. 1116; see *Doe St. Julian*, *Shrewsbury* v. *Cowley*, 1 C. & P. 123. Permission of the owners must therefore be first obtained. *Northampton* v. *Ward*, 2 Str. 1238. Stallage is the payment due to the owners of a market in respect of the exclusive occupation of a portion of the soil. *Yarmouth* v. *Groom*, 1 H. & C. 102: see also *Reg.* v. *Casswell*, L. R. 7 Q. B. 328. The question what constitutes a stall is a question of fact for a jury. *Ib.* An action will lie by the owners of a market for stallage. *Newport* v. *Saunders*, 3 B. & Ad. 411. This sub-section appears to authorize a distress for rent and a sale after six hours' notice. It is presumed that before any distress can be justified the relation of landlord and tenant must exist. *Woelpper* v. *Philadelphia*, 38 Pa. St. 203; *Dubuque* v. *Miller*, 11 Iowa, 503. The relation of landlord and tenant at a rent certain of a corporeal hereditament gives the right of distress at common law; but at common law there was no right to sell a distress which was looked upon as a mere pledge for payment of rent. The statute 2 W. &. M. sess. 1, c. 5, s. 2, which provided that after the goods distrained had been appraised, the landlord "shall and may lawfully sell the goods and chattels so distrained, for the best price that can be gotten for the same," &c., at the same time provided that the sale should not be made until *after the expiration of five days* from the seizure. This restriction in the case of butchers' meat is for obvious reasons, removed, and power given to sell "after six hours' notice." A by-law requiring a butcher, before getting a stall, to procure a license and pay a fee, was held bad. *In re Snell and Belleville*, 30 U. C. Q. B. 81. But see now sub-s. 5.

(*s*) The apparent meaning of the assize of bread seems to be the power or privilege of assizing or adjusting the weight or measure of bread. *Re Nasmith*, 2 O. R. 192. A by-law of the city of Toronto declared what the weight of loaves should be and enacted that the weight of each loaf sold or offered for sale should be stamped thereon and that bread offered for sale of any less weight than the weight fixed by the by-law should be seized and forfeited. Held that the by-law was intra vires and not unreasonable. *Ib.* See note *g* to sub-s. 21, sec. 479. See also sec. 489, sub-s. 52.

Respecting Almshouses—Charities. *Sec.* 504 (11).
" *Corporation Surveyor.* *Sec.* 504 (12).
" *Gas and Water.* *Sec.* 504 (13), 505-508.

By-laws may be made for

504. The council of every city and town may pass by-laws:

Intelligence Offices.

Licensing intelligence offices.

1. For licensing and regulating suitable persons to keep intelligence offices, for registering the names and residences of, and giving information to, or procuring servants, labourers, workmen, clerks, or other employees for employers in want of the same, and for registering the names and residences of, and giving information to, or procuring employment for, domestics, servants and other labourers, and any other class of servant, workman, clerk, or person seeking employment, and for fixing the fees to be charged and recovered by the keepers of such offices; 50 V. c. 29, s. 30.

Regulation of.

2. For the regulation of such intelligence offices;

Duration of license.

3. For limiting the duration of or revoking any such license; (*a*).

Prohibition without license.

4. For prohibiting the opening or keeping of any such intelligence office within the municipality without license; (*b*)

Fees:

5. For fixing the fee to be paid for such license, not exceeding $10 for one year; (*c*) 46 V. c. 18, s. 504 (2-5).

Police.

Police.

6. For establishing, regulating and maintaining a police; but subject to the other provisions of this Act. (*d*).

Superannuation and benefit funds

7. For aiding and assisting by annual money grant or otherwise, as the council may deem expedient, the establish-

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(*a*) The license will, it is presumed be an annual one (see sub-s. 5), granted upon conditions as to conforming to regulations, and revocable at any time for breach of the conditions.

(*b*) The power to license would, if there were no express legislation on the subject, involve the power of preventing persons exercising the calling without a license. But the legislature has not left the matter to inference.

(*c*) If there were no limitation as to the amount of the fee, it would still have to be a reasonable one. See sub-sec. 25 of sec. 489. The maximum according to this section is $10.

(*d*) See sec. 440, and notes thereto.

ment and maintenance of superannuation and benefit funds for the benefit of the members of the police force and fire brigades, and of their families respectively, where police forces and fire brigades are established. for fire and police force.

Industrial Farm—Exhibitions.

8. For acquiring any estate in landed property within or without the city or town for an industrial farm, or for a public park, garden or walk, or for a place for exhibitions, (*e*) and for the disposal thereof when no longer required for the purpose; (*f*) and for accepting and taking charge of landed property, within or without the city or town, dedicated for a public park, garden or walk for the use of the inhabitants of the city or town. *See also secs.* 460, 462. Industrial farms, parks etc.

9. For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for exhibitions as the council deems necessary; (*g*). Buildings thereon.

10. For the management of the farm, park, garden, walk, or place for exhibitions and buildings; (*h*). Managing the same.

(*e*) The power to acquire land outside the limits of the municipality for any purpose, is not one ordinarily conferred on municipal corporations. See note *k* to sec. 20. The acquisition of land for the purposes specified is intended for the benefit of the public health and public welfare. See *In re Central Park Extension*, 16 Abb. Pr. (N.Y.) 56; *Park Commissioner* v. *Williams*, 51 Ill. 57; *Owners, &c.* v. *Albany*, 15 Wend. (N.Y.) 374. Land may be so acquired for public parks, gardens, or walks by purchase or dedication. The words on a plan, "Garden Square," held not necessarily to imply a dedication. *Pella* v. *Scholte*, 24 Iowa 283. So of the words "The Park." *Perrin* v. *Railway Co.*, 36 N. Y. 120; *Price* v. *Thompson*, 38 Mo. 363. "Spencer Square." *Logansport* v. *Dunn*, 8 Ind. 178. "Colosseum." *Livandais* v. *Municipality*, 16 La. 512; *Xiques* v. *Bujac*, 7 La. An. 499; *Cox* v. *Griffin*, 18 Ga. 728. The words "Depot of O. & P. Railroad" do not shew a dedication to the public. *Todd* v. *Railroad Co.*, 19 Ohio St. 514. See sub-s. 1 of sec. 479. See also the Public Parks Act, Rev. Stat. c. 190.

(*f*) The owner of land having dedicated to the public a square by filing a plan on which were the words, "square to remain always free from any erection or obstruction," it was held that the municipality could not close up and dispose of part of it. *Re Peck and the Corporation of Galt*, 46 U. C. Q. B. 211. See also *Kennedy* v. *Toronto*, 12 O. R. 211; *Van Koughnet* v. *Denison*, 11 A. R. 699.

(*h*) The management of the farm, park, garden, walk, &c., must of course be subordinate to the use intended. The regulations for management must not be contrary thereto but in furtherance thereof.

Almshouses—Charities.

Almshouses, etc.

11. For establishing and regulating within the city or town, or on the industrial farm or ground held for public exhibitions, one or more almshouses or houses of refuge for the relief of the destitute, (*i*) and also for aiding charitable institutions within the city or town; (*k*). *See sec.* 479 (12), *and as to Workhouses, sec.* 462.

Corporation Surveyor.

Corporation surveyor.

12. For appointing any provincial land surveyor to be the corporation surveyor; (*l*). 46 V. c. 18, s. 504 (7-13).

Gas and Water.

Construction of gas and water works.

13. For constructing gas and water works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within a time not exceeding thirty years, nor less than five years. (*m*) 46 V. c. 18, s. 504 (14).

Estimate to be published, and notice of taking poll on by-law

505. No by-law under the last sub-section of the preceding section shall be passed—

(*i*) "Destitute." The poor taken notice of by the English law, which is a complete system, are—

1. Poor by impotency: as the aged or decrepit, fatherless or motherless, poor under sickness, and persons who are idiots, lunatics, lame, blind, &c.;

2. Poor by casualty: such as able-bodied persons decayed or ruined by unavoidable misfortunes, or otherwise out of employment, and unable to procure employment;

3. Poor by prodigality or debauchery; also those called thriftless poor, as idle, slothful persons. See further, note *v* to sub-s. 12 of sec. 479. As to support of destitute insane persons, see sec. 520.

(*k*) A municipal corporation has no power, in the absence of express legislative authority, to grant money in aid of any local object *outside* the limits of the municipality. See note *k* to sec. 20.

(*l*) Municipal corporations have an implied power to appoint such officers as are necessary for corporate purposes. See note *r* to sec. 243.

(*m*) The by-law is made subject to a vote of the people. Secs. 505, 506. Special provision is made as to improvements and extensions by the proviso added to sec. 505 by 51 V. c. 28, s. 24. See as to form of by-law sec. 340. For other powers as to gas and water see sec. 480 and Rev. Stat. caps. 191, 192.

Firstly:— Until estimates of the intended expenditure have been published for one month, and notice of the time appointed for taking a poll of the electors on the proposed by-law has been published for two months, and a copy of the proposed by-law at length as the same may be ultimately passed, and a notice of the day appointed for finally considering the same in council, have been published for three months, in some newspaper in the municipality; or if no newspaper is published therein, then in some newspaper in the county in which the municipality is situate; (*n*)

Poll to be held and majority must be in favour.

Nor, secondly:—Until at a poll held in the same manner and at the same places, and continued for the same time as at elections for councillors, (*o*) a majority of the electors, voting at the poll, vote in favour of the by-law;

By-law to be passed within three months.

Nor, thirdly:—Unless the by-law is passed within three months after holding the said poll. (*p*) 46 V. c. 18, s, 505.

Provided always that where any city having a population in excess of fifty thousand shall have constructed gas or water works under the authority of this Act, or under the authority of *The Municipal Water Works Act 1882*, or under the authority of any special Act or Acts, or shall hereafter construct such works under the authority of the said Acts or any future amendments of the same, and shall have raised the money for the purchase or construction of such works, or shall hereafter so raise the same by a general rate on the whole of the assessable property of the said corporation under a by-law or by-laws lawfully passed or to be passed, it shall be lawful for the council of the city to raise on the credit of the said corporation such further sums as may be necessary to extend or improve the said works from time to time on the whole ratable property of the said corporation by by-laws to be passed as required by sub-section 13 of section 504 of this Act, and without complying with the requirements of this section, and it shall not be necessary to obtain the assent of the electors or ratepayers to such by-law or by-laws, provided the same shall first be approved of by the Lieutenant-Governor in Council, it being first shewn to the satisfaction of the Lieutenant-Governor in Council that the proposed extensions are

(*n*) See notes *i* and *j* to sec. 293.

(*o*) This no doubt means elections of members of council. See sec. 88 *et seq.*

(*p*) See note *b* to sec. 185.

necessary, and that a sufficient additional revenue will be derived therefrom to meet the annual special rate required to pay the new debt and interest; and provided also that on the final passing of such by-law or by-laws, three-fourths of all the members of the council shall vote in favour of the same. 51 V. c. 28, s. 24.

If by-law rejected.

506. If the proposed by-law is rejected at such poll, no other by-law for the same purpose shall be submitted to the electors during the current year. (*q*) 46 V. c. 18, s. 506.

Provisions where there is a water company incorporated for the municipality.

507. In case there is any water company incorporated for the municipality, the council shall not levy any water rate until such council has by by-law fixed a price to offer for the works or stock of the company; nor until after thirty days have elapsed after notice of such price has been communicated to the company without the company's having accepted the same, or having, under the provisions of this Act as to arbitrators, named and given notice of an arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the company. 46 V. c. 18, s. 507.

Proviso as to provisions in special Acts

508. The foregoing clauses or any of them shall not be construed to apply to or affect the provisions contained in any special Act obtained or to be obtained by any company or municipal corporation. 46 V. c. 18, s. 508.

[*As to purchase of toll roads and abolition of market fees and tolls*, see sec. 633, sub-s. 7.]

DIVISION VIII.—POWERS OF COUNCILS OF TOWNSHIPS, TOWNS AND VILLAGES.

Drainage.

509. The council of every township, town or village may pass by-laws—

Borrowing Money for Drainage Purposes.

1. For borrowing money and issuing debentures therefor,

(*q*) The object of this section is to protect the ratepayers from being harassed and the municipality put to needless expense by the useless submission of by-laws for approval of the electors. The "current year" intended is the current municipal year which begins on 1st January and ends on 31st December.

for the purposes and subject to the provisions of *The Tile, Stone and Timber Drainage Act.* 46 V. c. 18, s. 509. Rev. Stat. c. 38

2. For making grants in aid of any high school or collegiate institute, or to build, preserve, enlarge or improve any high school or collegiate institute in any adjacent or other municipality. (*s*) 51 V. c. 28, s. 25.

DIVISION IX.—POWERS OF COUNCILS OF TOWNS AND INCORPORATED VILLAGES.

510. The council of every town and incorporated village may pass by-laws; (*t*) By-laws may be made for

Licensing Vehicles, etc.

1. For regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses and other vehicles for hire; (*u*) for establishing the rates of fares to be taken by the owners or drivers, (*v*) and for enforcing payment thereof. (*w*) 46 V. c. 18, s. 510. Regulating and licensing livery stables, cabs, etc.

DIVISION X—EXCLUSIVE POWERS OF COUNCILS OF COUNTIES.

Respecting Protection of Booms. *Sec.* 511 (1)
" *Guaranteeing Debentures.* *Sec.* 511 (2)
" *Fences.* *Sec.* 511 (3)
" *Livery Stables, etc.* *Sec.* 512.
" *Board of Audit—Criminal Justice Account.* *Secs.* 513, 514.
" *Improvements by either County of a Union.* *Secs.* 515-519.
" *Support of Destitute Insane Persons.* *Sec.* 520.
" *Roads and Bridges.* *See* sec. 565.

511. The council of every county may make by-laws; By-laws may be made for

(*s*) See further sec. 495 (7-9).

(*t*) Commissioners of police in cities have similar powers to those here conferred upon councils of towns and incorporated villages. See sec. 436.

(*u*) See note *f* to sec. 436.

(*v*) See note *g* to sec. 436.

(*w*) See note *i* to sec. 436.

Protecting Booms.

Protecting booms.

1. For protecting and regulating booms on any stream or river for the safe keeping of timber, saw-logs and staves within the municipality ; (*a*)

Guaranteeing Debentures.

Guaranteeing debentures.

2. For guaranteeing debentures of any municipality within the county, as the council may deem expedient ; 46 V. c. 18, s. 511.

Fences.

Powers of county councils in respect of fences.

3. For the exercise, in respect of fences along highways, or parts thereof, which it is the duty of the council to maintain, of the powers conferred upon the councils of townships, cities, towns and incorporated villages, by sub-sections 17 and 20 of section 489 of this Act. 48 V. c. 39, s. 14.

(*a*) The council of every county shall be deemed and held to have had, and possessed on, from and since the first day of February, 1883, the powers conferred by this sub-section, and also the power to assist, aid, and compensate, either by payment of money or otherwise, any owner or occupier of land bordering upon any public highway within the county for the taking down, altering or removing any fence or fences which, in the opinion of the council, would be likely to cause such an accumulation of snow or drift as would impede or obstruct travel on such highway or any part thereof, or for the erection and construction of some other description of fence, approved of, or designated by the council, and subject to such terms and conditions in that behalf as by such council have been or shall be fixed and prescribed. 49 V. c. 37, s. 35.

(*a*) The right to float timber, saw-logs and staves over rivers and other streams, is an ordinary right of navigation, and is recognized by statute. See *Little* v. *Ince*, 3 U. C. C. P. 528 ; *Caldwell* v. *McLaren*, 9 App. Cas. 392. See also Rev. Stat. c. 120. Such timber is usually for the time kept in booms, and the protection and regulation of booms becomes therefore a matter of municipal concern. A provincial legislature cannot confer upon a boom company power to obstruct a tidal and navigable river , *Queddy River Driving Boom Co.* v. *Davidson*, 10 S. C. R. 222 ; 3 Cart. 243. See further *McMillan* v. *Southwest Boom Co.*, 1 Pugsley and Burbidge 715 ; 2 Cart. 542.

511 (*a*)—(1) The council of any county may pass a by-law providing that no sled, sleigh or other vehicle upon runners (except cutters or pleasure sleighs) drawn by horses or other animals, shall be used by any person residing within the county for the conveyance of persons or goods, on any of the roads or highways within the county, unless the runners thereof shall be apart from each other at the bottom, at least three feet, nine inches; Provided that no such by-law shall apply to any sled, sleigh, or other vehicle upon runners owned or used by any person not resident within the said county.

(2) The council in passing such by-law may exempt from its operation all sleds, sleighs, or vehicles on runners owned at the time of the passing of such by-law by any persons resident within the county.

(3) The by-law shall not come into force until the expiration of one year from the time of the passing thereof, or such further time as the council may determine upon. 51 V. c. 28, s. 26.

Livery Stables, etc.

Regulating and licensing livery stables, etc.

512. The council of every county, having county gravel or macadamized roads within its jurisdiction, and under its immediate control, such roads being kept up and repaired by municipal taxation, and upon which no toll is collected, shall have power to pass a by-law or by-laws for regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire; (*b*) and for issuing and regulating teamsters' licenses; (*c*) for regulating the width of tire used on such vehicles; (*d*) for establishing the rates of fare that may be collected or taken by the owners or drivers; (*e*) for enforcing the payment of such licenses, (*f*) for regulating rates of fares for the conveyance of goods or passengers; (*g*) and for enforcing the

Tires.

Rates of fare.

(*b*) See note *f* to sec. 436. The powers conferred by this section can be exercised only if the roads mentioned are kept up and repaired by municipal taxation and if no toll is collected.

(*c*) It is presumed teamsters teaming for hire only are here intended. See note *f* to sec. 436.

(*d*) See note *n* to sub. s. 36 of sec. 496.

(*e*) See note *g* to sec. 436.

(*f*) See note *i* to sec. 436.

(*g*) See note *g* to sec. 436.

width of tire that may be used on such vehicles, when travelling on the aforesaid county gravel or macadamized roads. 46 V. c. 18, s. 512.

Board of Audit—Criminal Justice, etc.

County boards of audit.

513. Every county council shall appoint at its first meeting in each year two persons, not more than one of whom shall belong to the council, to be members of the board of audit, (*h*) for auditing and approving accounts and demands preferred against the county, the approving and auditing whereof previous to the 19th day of December, 1868, belonged to the General Quarter Sessions. 46 V. c. 18, s. 513.

Payment of members of board.

514. The council may pay the members of the said board of audit, any sum not exceeding $4 each per day for their attendance at such audit, and five cents for each mile necessarily travelled in respect thereof in going to and from such audit. (*i*) 46 V. c. 18, s. 514.

Improvements by either County of a Union.

Enabling either county of a union to make improvements therein.

515. The councils of united counties may make appropriations and raise funds to enable either county separately to carry on such improvements as may be required by the inhabitants thereof. (*k*) 46 V. c. 18, s. 515.

Reeves, etc. of the county interested alone to vote.

516. Whenever any such measure is brought before the council of any united counties, none but the reeves and deputy-reeves of the county to be affected by the measure shall vote; except in case of an equality of votes,

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(*h*) It would be very inconvenient for the council to pay the accounts mentioned in this section to the several officers before audit by the Government auditors and final allowance by the Government; for then occasions might be constantly arising for reclaiming from the officers any sums that the Government County Auditors or the Provincial Treasurer may have rejected. *Per* Robinson, C. J., in *Lambton* v. *Pousett*, 21 U. C. Q. B. 472, 484; 22 U. C. Q. B. 412; see also *In re Davidson and Quarter Sessions*, 24 U. C. Q. B. 66; *In re Dartnell and Quarter Sessions*, 26 U. C. Q. B. 430; *In re the Sheriff of Lincoln*, 34 U. C. Q. B. 1. See also Rev. Stat. c. 84, s. 7.

(*i*) As to compensation to public officers. See notes to s. 278.

(*k*) The general rule is, that during the union of counties all laws applicable to counties shall apply to the union as if the same formed but one county. Sec. 37. The exceptions made by the statute are as to representation in Parliament and registration of titles. *Ib.* The power for either county separately to carry on improvements is a further exception to the general rule.

when the warden, whether a reeve or deputy-reeve of any portion of the county to be affected by the measure or not, shall have the casting vote. (*l*) 46 V. c. 18, s. 516. Exception.

517. In all other respects, all the provisions of this Act making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to be raised directly by taxation, shall be adhered to. (*m*) 46 V. c. 18, s. 517. Provisions of this Act for repayment to apply.

518. The treasurer of the united counties shall pay over all sums so raised and paid into his hands by the several collectors, without any deduction or percentage. 46 V. c. 18, s. 518. Treasurer to pay over moneys without deduction.

519. The property to be assessed for the purposes contemplated in the last preceding four sections of this Act, shall be the same as the property assessed for any other county purpose, except that any sum to be raised for the purposes of one county only, or for the payment of any debt contracted for the purposes of one county only, shall be assessed and levied solely upon property assessed in that county, and not upon property in any other county united with it, (*n*) and any debenture that may be issued for such purposes may be issued as the debenture of the said one county only, and shall be as valid and binding upon that county as if that county were a separate municipality, but such debenture shall be under the seal of the united counties, and be signed by the warden thereof. (*o*) 46 V. c. 18, s. 519. The property to be assessed in such cases.

(*l*) See note *j* to sec. 157.

(*m*) See sec. 357, *et seq.*

(*n*) *i. e.*, "on the *whole* ratable property *in the county*. See note *c* to sec. 357.

(*o*) It is not easy to understand this part of the section. Is it intended that the promise to pay shall be that of the one county only? The difficulty is that, until separation, there is no corporate body capable of promising or making a contract. The provision that any debenture that may be issued may be issued "as the debenture of the one county only," and shall be as valid and binding upon that county "as if that county were a separate municipality," would appear to indicate the affirmative of the proposition. But the concluding provision, that such debenture "shall be under the seal of the *united counties*, and be signed by the warden *thereof*," is inconsistent with such a conclusion. It is submitted that the debenture should be so framed as to shew on its face that it forms a charge on the one county only.

Support of Destitute Insane Persons.

County council to make provision for the destitute insane.

520. The county council of each county shall, from time to time, make provision for the whole or partial support either in the county gaol or some other place within the county, of such insane destitute persons as cannot properly be admitted to the provincial asylums, and shall determine the sum to be paid for such support, and also the parties to whom such sums shall be paid by the county treasurer. 46 V. c. 18, s. 520.

DIVISION XI.—EXCLUSIVE POWERS OF COUNCILS OF TOWNSHIPS.

Respecting Statute Labour. *Sec.* 521 (1-8).
" *Town Halls.* *Sec.* 521 (9-10).
" *Ferries.* *Sec.* 521 (11).
" *Purchasing Wet Lands.* *Sec.* 521 (12).
" *Boundaries of Marsh Lands.* *Sec.* 521 (13).
" *Nuisances.* *Sec.* 521 (14).
" *Dry Earth Closets.* *Sec.* 521 (15).
" *Obstructions to Streams and Water-Courses.* *Sec.*
" 521 (16-18), 522.
" *Repair of Roads.* *Sec.* 523.

By-laws may be made for

521. The council of every township may pass by-laws—

Statute Labour.

Commutation of statute labour.

1. For empowering any person (resident or non-resident) liable to statute labour within the municipality, to compound for such labour, (*p*) for any term not exceeding five years, at any sum not exceeding $1 for each day's labour;

Rate of commutation.

2. For providing that a sum of money, not exceeding $1

(*p*) A proprietor of land cannot be compelled actually to do statute labour in a township, unless himself a resident of such township, *Moore* v. *Jarron*, 9 U. C. Q. B. 233, and the power to pass by-laws for enforcing performance of statute labour only applies to those cases where the burthen legally exists. *In re Dickson and Galt*, 9 U. C. Q. B. 257. Non-resident proprietors are, however, clearly subject to assessment for commutation for statute labour. A non-resident who has not required his name to be entered on the roll is not entitled to be admitted to perform statute labour in respect of land owned by him. There is no liability to perform statute labour in a village municipality. *In re Stayner*, 46 U. C. Q. B. 275. See Rev. Stat. c. 193 s. 87, *et seq.* See also sec. 17, sub. s. 3 (*a*) of this Act.

for each day's labour, may or shall be paid in commutation of such statute labour; (*q*)

3. For increasing or reducing the number of days' labour, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the statute labour to which such persons are liable in respect of the amounts at which they are assessed, or otherwise respectively; (*r*) Fixing number of days' statute labour.

4. For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law; (*s*) Enforcing statute labour.

(*q*) The power, by the preceding subsection, is to compound "for any term not exceeding five years." This subsection applies to the amount of commutation money for each day's statute labour, in respect of the period for which the commutation is made. The power is by by-law to provide that a sum of money not exceeding $1 for each day's statute labour may or shall be paid in respect of such statute labour. There is no power to fix the amount of commutation, at a higher rate than $1 per day. See *In re Tilt and Toronto*, 13 U. C. Q. B. 447. The sum so fixed must apply equally to residents who are subject to statute labour and to non-residents in respect of their property. Rev. Stat. c. 193, sec. 95. Where the council of any township by by-law directs that a sum not exceeding $1 per day shall be paid as commutation for statute labour, the commutation tax is to be added in a separate column in the collector's roll, and collected and accounted for like other taxes. *Ib.* sec. 94. Where no such by-law has been passed, the statute labour in townships, in respect of lands of non-residents, must be commuted at the rate of $1 for each day's labour. *Ib.* sec. 96. No by-law is necessary unless the municipality desire to fix the commutation money at a less rate than $1 a day. *Robinson* v. *Stratford*, 23 U. C. Q. B. 99.

(*r*) See Rev. Stat. c. 193, s. 91 *et seq.*

(*s*) Any person liable to pay the sum named in sec. 88 of the Assessment Act, or any sum for statute labour commuted under sec. 94 of that Act, must pay the same to the collector within two days after demand. In case of neglect or refusal to pay, the collector may levy the same by distress. If no sufficient distress can be found, then upon summary conviction, before a justice of the peace of the county in which the local municipality is situate, of refusal or neglect to pay the said sum and of there being no sufficient distress, the person in default incurs a penalty of $5, with costs; and in default of payment at such time as the convicting justice shall order, shall be committed to the common gaol of the county, and be there put to hard labour for any period not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the said person to gaol, be sooner paid. Sec. 98. Any person liable to perform statute labour, under section 91 of the Act, not commuted, is required to perform the same when required to do so by the pathmaster or other officer of the municipality appointed for the purpose; and in case of wilful neglect or refusal to perform such

Regulating performance, etc.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed, or expended; (*t*).

Reducing or abolishing.

6. For reducing the amount of statute labour to be performed by the ratepayers or others within the municipality, or for entirely abolishing such statute labour; 46 V. c. 18, s. 521 (1-6):

7. For providing for the making and keeping open of township roads during the season of sleighing in each year, and for appointing overseers of highways, or pathmasters to

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statute labour after six days' notice shall incur a penalty of $5, and upon summary conviction before any justice of the peace, the justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offenders' goods and chattels; and in case there shall be no sufficient distress, the offender may be committed to the common gaol of the county, and there put to hard labour for any time not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the person to gaol, shall be sooner paid. *Ib.* All sums and penalties recovered under this section must be paid to the treasurer of the local municipality, and form part of the statute labour fund thereof. *Ib.* The warrant may, it seems, issue for imprisonment without first summoning the defaulter to answer, or making a formal conviction. *Reg.* v. *Morris*, 21 U. C. Q. B. 392; but see note *e* to sub-s. 33 of sec. 496. A by-law directing that the overseers of highways should bring any person refusing or neglecting to perform statute labour before the reeve of the municipality or nearest justice of the peace, who, upon conviction, should impose a fine of five shillings for each day's neglect, with costs, and adjudge that the payment of such fine should not relieve the person fined from the performance of the labour, was held good. *In re Stoddard and Wilberforce, and Grattan and Fraser*, 15 U. C. Q. B. 163. So a by-law enacting that any person liable to perform statute labour, who after being duly notified should neglect or refuse to attend, should forfeit or pay five shillings for every day he should neglect or refuse, and that the payment of such fine should release such person from the performance of statute labour, was held good. *In re Bannerman and Yarmouth*, 15 U. C. Q. B. 14.

(*t*) The power to regulate implies a power to make divisions, to which is added a power to regulate the manner in which the labour shall be performed or the commutation money expended in each division. A party to save himself from fine must perform, when called upon, his statute labour within the division in which he resides. *Gates* v. *Devenish*, 6 U. C. Q. B. 260. A township council can provide for the performance of statute labour upon the roads of their township to the extent of the commutation tax charged in respect of non-resident lands, and for payment therefor out of the general funds of the municipality before such tax has been received from the county treasurer, and the work is not necessarily restricted to any particular statute labour division. *Re Allan and the Corporation of Amabel*, 32 U. C. C. P. 242.

perform that duty, and such overseers and pathmasters shall have full power to call out persons liable to perform statute labour within their respective municipalities, to assist in keeping open such roads, and may give to such persons as may be employed in so doing certificates of having performed statute labour to the amount of the days' work done, and such work shall be allowed for to such persons in their next season's statute labour; (*a*)

8 For providing for the application of so much of the commutation of the statute labour fund, as may be necessary for keeping open such roads as last aforesaid, within such respective municipalities; (*b*) 48 V. c. 39, s. 20 *part.*

Town Halls.

Acquiring land for a town hall in a town or village.

9. For acquiring lands in any town or incorporated village within, or partly within, the original boundaries of the township, for the purpose of erecting thereon a town hall, or for renting or acquiring a hall, within such town or village, for the purpose of a town hall;

Township and other meetings may be held and notices posted at such hall.

10. Any township owning, renting or otherwise acquiring a town hall in any such town or village may hold at such town hall, any meeting, nomination or election, or post at such town hall any notice, assessment roll, or voters' list, or do thereat any other act required by law to be held, posted or done in the township at the town hall, and any meeting of any mutual insurance company, or upon the formation thereof, which is required by any statute to be held in the municipality, may lawfully be held in such hall. 46 V. c. 18, s. 521 (7, 8).

Ferries.

Powers of townships as to ferries.

11. For licensing and regulating ferries between any two places within the township with the same rights and powers in respect thereof, and as to establishing rates as are conferred upon county councils by sub-section 4 of section 495 of this Act, and upon the same terms and conditions as are provided by said sub-section 4; but this shall not apply to any ferry for which a license had been granted prior to the

(*a*) See Rev. Stat. c. 197, ss. 5-7.

(*b*) See Rev. Stat. c. 197, s. 5.

30th day of March, 1885, and was then running, until the expiry of such license (*c*). 48 V. c. 39, s. 16.

Purchasing Wet Lands.

Purchase of wet lands from Government, etc.

12. For purchasing from the Government or any corporation or person, at a price (in case of Crown Lands, to be fixed by the Lieutenant-Governor in Council, and which price the Lieutenant-Governor in Council is hereby authorized to fix), all the wet lands at the disposal of the Crown or such corporation or person in such township; and such lands may be sold accordingly to the corporation of such township;

Raising money for purchasing and draining same.

(*a*) The purchase and draining of such lands shall be one of the purposes for which any such corporation may raise money by loan or otherwise, or for which they may apply any of their funds not otherwise appropriated. (*d*)

May hold or dispose of such land

(*b*) The corporation of a township may possess and hold the land so purchased, and may, whenever they deem it expedient, sell or otherwise depart with or dispose of the same by public auction, in like manner as they may by law sell or dispose of other property, and upon such terms and conditions, and with such mortgages upon the land so sold, or other security for the purchase money or any portion thereof, as they may think most advantageous. (*e*)

Proceeds of sale.

(*c*) The proceeds of the sale of such lands shall form part of the general funds of the municipality. 46 V. c. 18, s. 482 (21).

Boundaries of Marsh Lands.

Boundaries of marsh lands.

13. For declaring that in the case of any lands, the boundary line, or any part of the boundary line whereof passes through a marsh or swamp, or any land covered with water, the same shall, so far as respects that part of such boundary line which so passes through a marsh or swamp, or land covered with water, be deemed to be wholly enclosed within the mean-

(*c*) See sec. 287 and sec. 495, sub-s. 4.

(*d*) See Rev. Stat. caps. 36 to 38, and sec. 569 *et seq.* of this Act.

(*e*) As to the power to foreclose such mortgages. See *Orford* v. *Bailey*, 12 Grant 276.

ing of section 1 of *The Act Respecting Petty Trespasses*, if posts are put up and maintained along such part of such line at distances which will permit of each being clearly visible from the adjoining post. 50 V. c. 29, s. 50. Rev. Stat c. 101.

Nuisances.

14. For regulating slaughter houses and manufactures or trades which may prove to be nuisances. (*f*) 49 V. c. 37, s. 14.

Dry Earth Closets.

15. For regulating the construction of dry earth closets and compelling the use of the same within such limits within the municipality as may be defined by the by-law (*g*) 50 V. c. 29, s. 31.

Obstructions to Streams and Water-courses.

16. For preventing the obstruction of streams, creeks and water-courses, (*h*) by trees, brushwood, timber, or other Preventing obstruction of streams, etc.

(*f*) See sub-s. 41 of sec. 489.

(*g*) See sub-s. 47 of sec. 489.

(*h*) According to the civil law which was in force in the province of Quebec until the division thereof in 1792, all rivers were distinguished as public and private. Such rivers were called public rivers as maintained a perpetual stream and were capable of being navigated; and an express interdict was made that nothing should be placed in a public stream whereby the navigation might be prejudiced. The civilians held that a stream might acquire the denomination of river either by its magnitude or by the common acceptation of the neighbourhood. A river was distinguished from a common current occasioned by land floods, because one had always a constant stream, regularly confined within banks, and the other might be casual and temporary, flowing over a level. A temporary inundation by floods was not held to deserve the appellation of a river, or to alter the original private nature of the soil. Wherever a public stream flowed, though it were through a private channel artificially made, yet it constituted that place public; but on the other hand, if the stream ceased to flow over it, then it became again private. *Per* Macaulay, C. J., in *Reg.* v. *Meyers*, 3 U. C. C. P. 305-317.

In England there seem to be at common law three descriptions of rivers or water-courses:

1. Navigable rivers, technically so termed. See note 3 to sec. 535;

2. Rivers not navigable in law, but so in fact; and though private in relation to the ownership of the soil, yet public highways in relation to the use of the water;

materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise ;

Levying expenses.

17. For levying the amount of such expense in the same manner as taxes are levied ; (*i*)

Penalties.

18. For imposing penalties on parties causing such obstructions. (*k*) 46 V. c. 18, s. 521 (9-11.)

19. For regulating the distance from any public highway within the municipality within which unenclosed portable steam-engines may be used for running a saw mill or shingle mill, and preventing the use of the same for either of such purposes within such distance.

20. For imposing penalties on parties setting up or operating a portable steam-engine for either of such purposes in contravention of such by-law. 51 V. c. 28, s. 27.

When stream in any township cleared of obstructions, notice may be served on council of adjoining municipality requiring them to clear such stream within their municipality.

522. Whenever any stream or creek in any township is cleared of all logs, brush or other obstructions to the town line between such township and any adjoining township into which such stream or creek flows, the council of the township in which the creek or stream has been cleared of obstruction may serve a notice in writing on the head of the council of the adjoining township into which the stream or creek flows, requesting such council to clear such stream or creek

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3. Private rivers, strictly so called. *Per* Macaulay, C. J., in *Reg.* v. *Meyers*, 3 U. C. C. P. 318.

The powers under this section are for preventing the obstruction of "streams, creeks, and water-courses," and appear to apply to all the foregoing streams.

(*i*) In 1859 the defendants assuming to act under Con. Stat. U. C. c. 54, s. 277, passed a by-law requiring persons to clear out all obstructions in streams across their lots, and providing that the council in their discretion might do the work and levy the cost thereof by special rate on the lands, imposing penalties, &c. The defendants cleared a stream on and above the plaintiff's land, and assessed him as a non-resident for $75, the amount expended on his lot, which he paid. The defendants did not, however clear the stream on the lot below, nor compel the occupant to do so, whereby in times of freshet increased quantities of water were brought down and dammed back on the plaintiff's land. Held, that the defendants were not liable to an action for damages at the suit of the plaintiff. *Danard* v. *Chatham*, 24 U. C. C. P. 590.

(*k*) See note *w* to sub-s. 17 of sec. 479.

through their municipality; (*l*) and it shall be the duty of such last named council, within six months after the service of the notice as aforesaid, to enforce the removal of all obstructions in such creek or stream within their municipality, to the satisfaction of any person whom the council of the county in which the municipality whose council served the notice is situate, shall appoint to inspect the same. And if the council receiving such notice shall neglect the said duty, and by reason of such neglect any public road, street, bridge, or highway in either of the said townships shall be out of repair, the corporation in default, but not the corporation that served the notice, shall, besides being subject to any punishment or proceeding provided by law, be civilly responsible for all damages sustained by any person by reason of such want of repair; but the action must be brought within three months after the damages have been sustained. (*m*) 46 V. c. 18, s. 522; 51 V. c. 28, s. 28.

Repair of Roads.

523. No stone, gravel, or other material shall be put upon the roads for repairs during the winter months so as to interfere with sleighing; 48 V. c. 39, s. 20 *part.*

TITLE II.—POWERS AND DUTIES OF COUNCILS AS TO HIGHWAYS AND BRIDGES.

DIV. I.—GENERAL PROVISIONS.
DIV. II.—COUNTIES, TOWNSHIPS, CITIES, TOWNS, AND VILLAGES.
DIV. III.—TOWNSHIPS, CITIES, TOWNS AND VILLAGES.
DIV. IV.—COUNTY AND TOWNSHIP COUNCILS.
DIV. V.—COUNTY COUNCILS.
DIV. VI.—TOWNSHIP COUNCILS.

(*l*) Subsections 16-18 of the preceding section relate only to the removal of obstructions from a stream *within* a township: but where the stream flows into an adjoining township, so that it may be said to be the joint interest of both townships to have the stream cleared, provision is by this section made for clearing the stream through the second municipality. See also sec. 535, by sub-ss. 3 and 4 of which provision is made for the removal of obstructions from rivers forming boundary lines.

(*m*) This involves the appointment by the county council of an inspector. The work is to be done to his satisfaction. No provision is, in express terms, made for enforcing the duty cast upon the second township. Mandamus probably would be the proper mode of enforcing the performance of such a duty.

DIVISION I.—GENERAL PROVISIONS.

Highways defined. Sec. 524.
Freehold in Crown. Sec. 525.
Jurisdiction of Councils. Sec. 526.
Possession in Municipalities. Sec. 527.
Acquiring Roads for Public Avenues. Sec. 528.
Assumption of County Bridges by Villages. Sec. 529.
Liability for Repairs. Secs. 530, 531.
County Roads and Bridges. Secs. 532, 533.
Improving and Maintaining County Roads. Secs. 534, 535.
Maintaining Township Roads. Secs. 536, 537.
Roads under joint jurisdiction. Secs. 538, 540.
Transfer of former powers of Justices in Sessions to County Councils. Sec. 541.
Roads vested in Her Majesty. Sec. 542.
Roads on Dominion Lands. Sec. 543.
Roads necessary for ingress and egress. Sec. 544.
Width of Roads. Sec. 545.
Notices of By-laws affecting Public Roads. Sec. 546.
Registration of Road By-laws. Sec. 547.
Disputes respecting Roads—Administration of Oaths. Sec. 548.
Mistakes in Opening Road Allowances. Sec. 549.

Highways Defined.

What shall constitute public highways.

524. All allowances made for roads by the Crown surveyors in any town, township or place already laid out, or hereafter laid out; (*a*) and also all roads laid out by virtue

(*a*) Before 50 Geo. III. c. 1, sec. 12 of which, is the origin of this section, the Crown was not restricted from altering the original plan of a township, although already laid out previous to making grants of lots of land therein. In the original survey, allowances for roads were of course made; and if afterwards the lots were located, described and granted in conformity thereto, it would be inferred that the allowances so made were dedicated by the Crown as public roads; but if, after survey, the Government deemed it expedient to abandon or deviate from the principles of it in the future grant of the township, no law prevented the exercise of such a right. See *Rex* v. *Allen*, 2 U. C. Q. B. O. S. 90; *Field* v. *Kemp*, 3 U. C. Q. B. O. S. 374. In this respect the 50 Geo. III. c. 1, altered the law, and it would now seem that if once a road acquires the legal character of a highway, by reason of the original survey or otherwise, it is out of the power of the Crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use the road. See *Reg.* v. *Bishop of Huron*, 8 U. C. C. P. 253; *Mountjoy* v. *Reg.* 1 E. & A. 429; *Reg.* v. *Hunt*, 16 U. C. C. P. 145; 17 U. C. C. P. 443.

of any statute, or any roads whereon the public money has

The present enactment is in some respects clearly prospective as well as retrospective; for its language is, "all allowances *made*, &c., in any town, township, &c., *already* laid out, or *hereafter* [to be] laid out, &c." It is said that the fact of a Government surveyor laying out certain allowances for roads or streets in the plan of the original survey of Crown lands, would be sufficient to give such roads or streets the legal character of highways, though there may have been no stakes planted on the ground to mark them out, and that they would be deemed in law highways, before they were actually opened and used, and before statute labour or public money had been expended upon them. *Per* Robinson, C. J., in *Reg.* v. *Great Western R. W. Co.*, 21 U. C. Q. B. 577; see also *Reg.* v. *Hunt*, supra; *Rowe* v. *Sinclair*, 26 U. C. C. P. 233. The fact of a Crown surveyor having laid out a road on the plan of the original survey makes it a highway, unless there be work on the ground clearly inconsistent with the plan. *Carrick* v. *Johnston*, 26 U. C. Q. B. 69. But where there is work on the ground, it must govern. *Ib.* Where trespass roads, are used, across the lands of private persons, owing to the original allowances not being opened, the right to exclusive possession of such roads would appear to vest in the proprietors of the soil on the road allowances being opened. See *Borrowman* v. *Mitchell*, 2 U. C. Q. B. 155; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *Reg.* v. *Plunkett*, 21 U. C. Q. B. 536. But where a highway has been surveyed, and a road constructed which was intended to be on the line so surveyed, if the road be found to differ from the true astronomical line mentioned as its course on the original survey, it does not follow that the owner of the freehold is entitled to possession of the part erroneously travelled, especially if user for many years be shewn, and considerable expenditure of public money. *Prouse* v. *Glenny* 13 U. C. C. P. 560. Roads without a defined course or definite boundaries, are not to be deemed common and public highways. *Schwinge* v. *Dowell*, 2 F. & F. 845; *Chapman* v. *Cripps*, *Ib.*, 864. All such cases should be dealt with in a liberal spirit, with a due regard to the customs and necessities of a new country, where roads are in their infancy and much land unenclosed. *Per* Hagarty, C. J., in *Moore* v. *Esquesing*, 21 U. C. C. P. 277-281. See further *Bradburn* v. *Morris*, 3 Ch. D. 812. On an application for a mandamus to open an alleged highway, the Court will require strict proof of the origin of the highway. *Re Lawrence and Thurlow*, 33 U. C. Q. B. 223. See further *Cubitt* v. *Lady Maxse*, L. R. 8 C. P. 704.

A road although obstructed at one end may be deemed a highway. *Wood* v. *Veal*, 5 B. & Al. 454; *Reg.* v. *Spence*, 11 U. C. Q. B. 31, 46, 47; but would not be deemed a highway if closed at both ends. *Bayley* v. *Jameson*, 1 C. P. D. 329. And once a highway always a highway. *Badgley* v. *Bender*, 3 U. C. Q. B. O. S. 221; *Rex* v. *Marchioness of Downshire*, 4 A. & E. 232; *Reg.* v. *Purdy*, 10 U. C. Q. B. 545; *Thomas* v. *Ringwood Board*, L. R. 9 Eq. 418. Land may under statute become a public highway by deposit of a plan shewing it as a highway. *McGregor* v. *Calcutt*, 18 U. C. C. P. 39; *Reg.* v. *Rubidge*, 25 U. C. Q. B. 299; and in some cases independently of any statute. *Guelph* v. *Canada Co.*, 4 Grant 632, 654; *Attorney-General* v. *Goderich*, 5 Grant 402; *Attorney-General* v. *Molson*, 10 Grant 436;

been expended for opening the same, (*b*) or whereon the statute labour has been usually performed, (*c*) or any roads passing through the Indian lands, (*d*) shall be deemed common and public highways, (*e*) unless where such roads have been already altered, or may hereafter be altered according to law, (*f*) 46 V. c. 18, s. 524. *See Rev. Stat.* c. 152, ss. 44, 45, 62 (1).

Freehold in the Crown.

Certain highways, etc., vested in the Crown.

525. Unless otherwise provided for, the soil and freehold (*g*) of every highway or road altered, amended or laid out,

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O'Brien v. *Trenton*, 7 U. C. C. P. 246; *Attorney-General* v. *Boulton*, 21 Grant 598. The assumption of a highway by a road company for the purpose of macadamizing or planking it does not render the highway less a highway for the purpose of prosecution in the event of obstruction. *Reg.* v. *Davis*, 35 U. C. Q. B. 107. It is not clear that the ordinary power of indictment for obstructing a highway is applicable where the highway is one which had never been opened or used. See *Rex* v. *Allen*, 2 U. C. Q. B. O. S. 101; *Reg.* v. *Great Western R. W. Co.*, 32 U. C. Q. B. 506.

(*b*) Public money may mean the money of the Government, or the money of the local municipal corporation. Either, it is apprehended, would be public money within the meaning of this section. But it must be shewn that the money was lawfully expended, and expended for opening the road. *Reg.* v. *Hall*, 17 U. C. C. P. 282.

(*c*) It must be shewn that statute labour was *usually* performed on the road. Where a witness stated that being pathmaster for two years some years since, he directed statute labour to be performed on the road, besides expending money of his own in improving it," it was held that the proof came very far short of what the statute requires. *Reg.* v. *Plunkett*, 21 U. C. Q. B. 536-541. See also *St. Vincent* v. *Greenfield*, 12 O. R. 297.

(*d*) "*Any* roads passing through *the* Indian lands" is indefinite language. So far there has not been any case decided as to its meaning. Probably "lands reserved for the Indians" are intended. See B. N. A. Act, sec. 91, sub-s. 24.

(*e*) "Shall be *deemed* common and public highways." These words have been read as if they were "shall be *presumed* to be common and public highways." In this view inquiry may be had as to the origin of the road, and if the facts repel the presumption, the road will not be held to be a common and public highway. *Reg.* v. *Great Western R. W. Co.*, 32 U. C. Q. B. 506-517.

(*f*) Where it was shewn that the road was only travelled as a temporary substitute for the proper allowance which ran near by, and the latter was afterwards opened, the Court inclined to think that the former might, within the spirit of this clause, be fairly said to have been altered when the public allowance was opened, for which it had for mere convenience been substituted. *Reg.* v. *Plunkett*, 21 U. C. Q. B. 536.

(*g*) The soil and freehold of a highway, at common law, remains

according to law, shall be vested in Her Majesty, Her Heirs and Successors. 46 V. c. 18, s. 525.

Jurisdiction of Municipal Councils.

Jurisdiction of councils over roads, etc.

526. Subject to the exceptions and provisions hereinafter contained, every municipal council shall have jurisdiction over the original allowances for roads and highways and bridges within the municipality. (*h*) 46 V. c. 18, s. 526.

Possession in Municipality.

Streets in cities, townships, towns

527. Every public road, street, bridge or other highway, in a city, township, town or incorporated village, shall be

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in the owner of the land. *Lade* v. *Shepherd*, 2 Str. 1004; *Every* v. *Smith*, 26 L. J. Ex. 344; *Borrowman* v. *Mitchell*, 3 U. C. Q. B. 135; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *Reg.* v. *Plunkett*, 21 U. C. Q. B. 536. By this section it is provided that the soil and freehold of *every* highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty. By sec. 527, it is provided that *every* public road, street, bridge or other highway shall be vested in the municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway reserved. Between the two there is an apparent inconsistency. This may perhaps be reconciled by reading this section as applicable to roads laid out by public authority of some kind, and section 527 to roads laid out by private individuals over their own land. *Per* Burns, J., in *Sarnia* v. *Great Western R. W. Co.*, 21 U. C. Q. B. 64; *Mytton* v. *Duck*, 26 U. C. Q. B. 64. See further *Standly* v. *Perry*, 3 S. C. R. 356; *Phifer* v. *Cox*, 8 Am. 98. The right of the public in either case is simply to use the road for the purpose of a highway. A user for different purposes, such as excavating soil, &c., would subject the person so using the road to an action at the suit of the owner of the freehold. *Cox* v. *Glue*, 5 C. B. 533. But a plaintiff cannot maintain ejectment for a portion of a public highway. *Sarnia* v. *Great Western R. W. Co.*, 21 U. C. Q. B. 59; *Fitzgibbon* v. *Toronto*, 25 U. C. Q. B. 137. But see *Goodtitle d. Chester* v. *Alker*, 1 Burr. 133.

(*h*) The control of public highways has been by the Legislature committed to the municipal corporations. They have, subject to the reservation, in sections 542 and 543, been entrusted with almost unlimited power of dealing with existing roads and opening new ones. See *Attorney-General* v. *Nepean Road Co.*, 2 Grant, 635, 636. The corporation of a county is liable to damages for neglect to keep in repair a county road or bridge. *Harold* v. *Simcoe and Ontario*, 16 U. C. P. 43; 18 U. C. C. P. 1; see further. *Reg.* v. *Yorkville*, 22 U. C. C. P. 431, and may maintain an action for an injury wrongfully done to a county road or bridge. *Wellington* v. *Wilson*, 14 U. C. C. P. 299; 16 U. C. C. P. 124. As to the duty of councils with respect to opening and repairing roads. See *Hislop* v. *Township of McGillivray*, 12 O. R. 749.

and incorporated villages vested in

vested in the municipality, (*i*) subject to any rights in the

(*i*) The declaration is that *every public* road, street, bridge, or other highway, in a city, township, town, or incorporated village, shall be *vested* in the municipality. The word "highway" is here used in its broadest sense, as including all public ways. See note *a* to sec. 524. It is made to include not only public roads, streets and *bridges* but *other* highways. See *Fort Edward Plank Road Co.* v. *Payne*, 17 Barb. (N. Y.) 567; *Plank Road Co.* v. *Thomas*, 20 Pa. St. 91; *Benedict* v. *Goit*. 3 Barb. (N.Y.) 459; *Plank Road Co.*, v. *Ramage*, 20 Pa. St. 95; *Plank Road Co.* v. *Rinemen*, *Ib.* 99. The roads of joint stock companies are not included. *St. Catharines* v. *Gardner*, 20 U. C. C. P. 107; 21 U. C. C. P. 190; see also *Port Whitby, &c., Road Co.* v. *Whitby*, 18 U. C. Q. B. 40; *Reg.* v. *Brown and Street*, 13 U. C. C. P. 356, unless purchased or otherwise legally acquired by the municipalities in which situate. *Reg.* v. *Paris*, 12 U. C. C. P. 445 *Reg.* v. *Louth*, 13 U. C. C. P. 615; see also *Totten* v. *Halligan*, *Ib.*, 567. If the company permits their road to remain out of repair for nine months next after the time fixed by the engineer or arbitrators for repair of the same, the company shall forfeit all right to their road, and the municipal council of the county through which such road or any part thereof passes, may enter upon and take possession of the same, and exercise the same jurisdiction over the same as the road company owning the road were entitled to do under the Joint-Stock Road Companies Act. Rev. Stat. c. 159, sec. 122. In case the council of the county do not think fit, within the period of one month next after the expiration of the nine months, to assume by by-law such road for the purposes of repairing the same and levying tolls thereon, the council of any municipality which would, under the provisions of the Municipal Institutions Act in force in the Province, be required to maintain and keep such road in repair as a common and public highway, shall be liable to the same duties as such council has or is subject to in respect of the public roads within its jurisdiction. *Ib.* sec. 123. Any such company may by by-law abandon any portion of their road. *Ib.* sec. 81. After such abandonment the council of any municipality within which such road or any part thereof lies may assume such abandoned portion of the road as lies within the municipality, and have and exercise the same jurisdiction over the same, and be liable to the same duties, as such council has or is subject to in respect to the public roads within its jurisdiction. *Ib.* s. 81. So the company may abandon the whole of their road. After such abandonment, the council of the county within which the road or any part thereof lies, may assume the abandoned portion of the road lying within the municipality, and enjoy all the rights, and be subject to all the responsibilities and liabilities, as provided in section 122 of that Act. Failing such action on the part of the county council, the road becomes subject to the same jurisdiction for the control and repair thereof, as further provided in section 123 of that Act. *Ib.* But no such company is entitled to abandon any intermediate portion of their road without the consent of the council of the county within which the portion of the road lies, such consent to be expressed by by-law. *Ib.* So provision is made for the vesting in the municipalities of roads after sales thereof to purchasers who make default in

soil which the individuals who laid out such road, street, bridge or highway reserved, (*k*) and except any concession or

municipalities subject to certain rights.

putting such roads in a proper state of repair. See *Ib.* ss. 125, 127, Roads or bridges laid out by Government and afterwards abandoned appear to be public roads, under the control of the local municipalities in whose limits situate. *Irwin* v. *Bradford*, 22 U. C. C. P. 18, 421. "Each municipality, as the law stands, can alone, in my judgment, be made responsible for the maintenance and repair of so much of such a bridge as lies within its borders, as in the case of a road similarly placed, unless where the road or bridge is assumed by the county." *Per* VanKoughnet, C., in *Harrold* v. *Simcoe*, 18 U. C. C. P. 9-16. A road or bridge may have originated in the convenience or for the protection of individuals, and yet afterwards become of public right a public road or bridge. *Rex* v. *Northampton*, 2 M. & S. 262; *Rossin* v. *Walker*, 6 Grant 619; *Reg.* v. *Boulton*, 15 U. C. Q. B. 272; *O'Brien* v. *Trenton*, 6 U. C. C. P. 350; *Daniel* v. *North*, 11 East. 375, note; *Reg.* v. *East Mark*, 11 Q. B. 877; *Reg.* v. *Petrie*, 4 E. & B. 737; *Malloch* v. *Anderson*, 4 U. C. Q. B. 481; *Reg.* v. *Spence*, 11 U. C. Q. B. 31; *Reg.* v. *Gordon*, 6 U. C. C. P. 213; *Reg.* v. *Glamorganshire*, 2 East 356,n; *Rex* v. *West Yorkshire*, 5 Burr-2594; *Reg.* v. *Yorkville*, 22 U. C. C. P. 431; *House* v. *Town of Fulton*. 17 Am. 463. Every individual has an equal right to use a public road, street, or bridge. The municipal corporations cannot be deemed proprietors, and as such entitled to control the possession, any more than any other corporation or person interested in the streets, roads, or highways. The property vested in municipal corporations is a qualified one, to be held and exercised for the benefit of the whole body of the corporation. They hold as trustees for the public, and not by virtue of any title which confers possession sufficient to maintain an action of ejectment. *Per* McLean, J., in *Sarnia* v. *Great Western R. W. Co.*, 21 U. C. Q. B. 62, but may, it seems, sue for injuries done to roads or bridges within their jurisdiction. See *Thurlow* v. *Bogart*. 15 U. C. C. P. 1; *Wellington* v. *Wilson*, 14 U. C. C. P. 299; 16 U. C. C. P. 124; *Reg.* v. *Fitzgerald*, 29 U. C. Q. B. 297; but see *Vespra* v. *Cook*, 26 U. C. C. P. 182. Defendants, if intending to deny property or possession when sued by a municipal corporation as proprietors of a road claiming property or exclusive possession, should put in issue the right of property of the plaintiffs. *Sarnia* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 65. Roads within townships may, under certain circumstances, be assumed as county roads. See ss. 532-534.

(*k*) The soil and freehold of roads laid out by the Crown, is vested in the Crown. See note *g* to sec. 525. This portion of the section applies to roads laid out by *individuals*. The section applies as much to highways dedicated by permissive user as to highways created by some express act of dedication. *Mytton* v. *Duck*, 26 U. C. Q. B. 61. No one, however, is obliged to dedicate a road, and if the public take it, they must take it subject to any condition the owner imposes. *Fisher* v. *Prowse*, 2 B. & S. 780. The owner who dedicates to the public use as a highway a portion of his land, parts with no other right than the right of passage to the public over the land so dedicated, and may exercise all other rights of ownership not inconsistent

other road within the city, township, town, or incorpor-

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therewith. *Per* Mellor, J., in *St. Mary's, Newington* v. *Jacobs*, L. R. 7 Q. B. 53. There may be a dedication of a *cul de sac* in like manner as a thoroughfare. *Stone* v. *Brooks*, 2 Withrow 70; *S. C.*, 35 Cal. 489. There may be a dedication to the public of a right of way, such as a footpath across a field, subject to the right of the owner of the soil to plough it up in due course of husbandry, and destroy all trace of it for the time. *Mercer* v. *Woodgate*, L. R. 5 Q. B. 26; *Arnold* v. *Blaker*, L. R. 6 Q. B. 433; *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96. The registration of a plan of a sub-division of a town lot and making sales in accordance with it, does not constitute a dedication of lanes thereon to the public. *Re Morton and City of St. Thomas*, 6 A. R. 323. The mere fact of the owner of lands selling them in lots, according to a plan shewing streets and lanes adjoining the several lots, does not bind him to continue such streets and lanes, unless a purchaser is materially inconvenienced by the closing of any of them. *Carey* v. *City of Toronto*, 11 A. R. 416; 14 S. C. R. 172. A deed executed by the owner of land abutting on a lane in which the limits of the lane were given, may be referred to for the purpose of ascertaining the width of the lane. *Reg.* v. *Donaldson*, 24 U. C. C. P. 148. An owner who opens a passage through his land and neither marks by any visible distinction, nor excludes persons from passing through his land by positive prohibition, shall be presumed to have dedicated it to the public, *per* Lord Ellenborough, in *Rex* v. *Lloyd*, 1 Camp. 260. But an obstruction, such as a gate post or chains, may be looked upon as evincing a contrary intention. *Roberts* v. *Kerr*, 1 Camp. 262 n; *Lethbridge* v. *Winter*, *Ib.* 263 n; *Woodyer* v. *Hadden*, 5 Taunt. 125; *Rex* v. *Inhabitants of St. Benedict*, 4 B. & Ad. 447; *Rex* v. *Inhabitants of Leake*, 5 B. & Ad. 469; *Marquis of Stafford* v. *Coyney*, 7 B. & C. 257; *Barraclough* v. *Johnson*, 8 A. & E. 99; *Poole* v. *Huskinson*, 11 M. & W. 827; *Pryor* v. *Pryor*, 26 L. T. N. S. 758; *Healey* v. *Corporation of Bately*, L. R. 19 Eq. 375; *Commonwealth* v. *Newbury*, 2 Pick. (Mass.) 51; *Proctor* v. *Lewiston*, 25 Ill. 153, but it is not conclusive. *Johnston* v. *Boyle*, 8 U. C. Q. B. 142; *Davies* v. *Stephens*, 7 C. & P. 570; *Beveridge* v. *Creelman*, 42 U. C. Q. B. 29. A highway may be dedicated to the public subject to a pre-existing right of user by the occupiers of adjoining land for the purpose of depositing goods thereon. *Marant* v. *Chamberlin*, 6 H. & N. 541. Where an erection or excavation exists upon the land, and the land on which it exists or to which it is contiguous, is dedicated to the public, it is dedicated subject to the inconvenience or risk arising from the existing state of things. *Fisher* v. *Prowse*, 2 B. & S. 770; *Robins* v. *Jones*, 15 C. B. N. S. 221; *Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054. Where a municipal corporation laid out a street over a defendant's lands and appraised his damages, it was held that the corporation in reducing the street to the proper grade had the right to carry the soil therefrom and deposit it on a street in another part of the municipality. *City of New Haven* v. *Sargent*, 9 Am. 360. See *Griswold* v. *Bay City*, 35 Mich. 452; *Denniston* v. *Clark*, 125 Mass. 215. It has been held that the owner of the fee of a public street is not entitled to compensation for the construction and operation of a horse railway thereon in the absence of special damage. *Hobart* v. *Mil-*

ated village, taken and held possession of by an individual in lieu of a street, road or highway laid out by him without compensation therefor. (*l*) 46 V. c. 18, s. 527.

Acquiring Roads for Public Avenues.

Acquiring roads and lands for public avenue or walk.

528. The council of every city and town may respectively pass by-laws for acquiring and assuming possession of and control over any public highway or road in an adjacent municipality by and with the consent of such municipality, the same being signified by a by-law passed for that purpose, for a public avenue or walk ;

And for acquiring from the owners of the land adjacent to such highway or road, such land as may be required on either side of such highway or road to increase the width

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waukee City Railway, 9 Am. 461. See further, *Indianapolis, &c. R. W. Co.* v. *Hartley*, 16 Am. 624; *City of Rekin* v. *Brereton*, *Ib.* 629. It has been held that where a highway is out of repair, the public have the temporary right to go on the adjoining land for the purpose of travel. *Carrick* v. *Johnston*, 26 U. C. Q. B. 65. But see *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96, 100. See also *O'Loughlin* v. *Dubuque*, 42 Iowa 539.

(*l*) A concession or other road, taken and held possession of by an individual in lieu of a street, road, or highway laid out by him, without compensation therefor, is exempted from the operation of this section. In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof, and for which no compensation has been made to the owner, the owner, if his lands adjoin, is *entitled* thereto in lieu of the road laid out. Sec. 551. The municipal council is also authorized, under certain circumstances, to convey the portion of road to the person so entitled. *Ib.* If they are to exercise a discretion as to the conveying, the positive effect of the enactment, may be destroyed, unless the Courts have power to compel the municipality to convey, or unless the enactment itself gives a title thereto. The fact that this section vests the other road allowances in the corporation but excepts those taken and held by individuals in lieu of a road laid out without compensation therefor, goes to sustain the view that such allowances are vested in those who have taken such possession of them. *Burritt and Marlborough*, 29 U. C. Q. B. 119, 132; *Re Beemer* v. *Grimsby*, 8 O. R. 98; 13 A. R. 225. See also *Purdy* v. *Farley*, 10 U. C. Q. B. 545. A municipal council may sell any work or macadamized, plank or other toll road which they have constructed or purchased, or any stock held in any road or other company, and apply the proceeds of such sale to the payment of debts contracted for the construction of the same, or for such stock; or if no debt exists for such work, road, or stock, then to the general purposes of the municipality or otherwise as they may determine. Rev. Stat. cap. 159, s. 65.

thereof to the extent of 100 feet or less, subject to the provisions of section 483 of this Act. 46 V. c. 18, s. 528.

Assumption of County Bridges by Villages.

Assumption by villages of bridges under control of county.

529. The councils of every county and incorporated village may pass by-laws for carrying out any arrangement between them for the assumption, by the village municipality, of any bridge within its limits, under the jurisdiction of the county council, and for such bridge being toll free; and for the payment by the village municipality to the county municipality of any part of the cost of the construction of such bridge;

After the passing of such by-laws the bridge shall be, and remain, under the exclusive jurisdiction of the village municipality; and the village municipality shall be subject to all the liabilities in the premises, which but for the transfer would have devolved on the county municipality; and the bridge shall be and remain toll free. 46 V. c. 18, s. 529.

Liability for Repairs.

Approaches to bridges.

530. The approaches for 100 feet to and next adjoining each end of all bridges belonging to, assumed by, or under the jurisdiction of any municipality or municipalities, shall be kept up and maintained by such municipality or municipalities; the remaining portion or portions of such approaches shall be kept up and maintained by the local municipalities in which they are situate. (*n*) 46 V. c. 18, s. 530.

Liability for repair of public roads, etc.

531—(1) Every public road, street, bridge and highway shall be kept in repair by the corporation, (*p*) and

(*n*) The proper meaning to be attached to the words "approaches" in this section is all such artificial structures as may be reasonably necessary and convenient for the purpose of enabling the public to pass from the road on to the bridge and from the bridge on to the road. If no such artificial structures are required for that purpose there is no liability to keep up and maintain any. If such artificial structures are required, but not to the extent of 100 feet, the liability is only to keep up and maintain them to the extent to which they are required. *Traversy* v. *Gloucester*, 15 O. R. 214. This provision does not relieve the "local municipalities" from their liability under sec. 531. They have the right to enforce this provision against the bridge owners, but to the public they still remain liable under sec. 531. *Ib.*

(*p*) The duty is to keep every public road, street, bridge and highway in repair. In England an obligation to keep highways in repair rests at common law on the parishes and counties. *Rex.* v. *Broughton*, 5 Burr. 2700; *Rex* v. *Pendcrryn*, 2 T. R. 513; *Reg.* v. *Scott*, 2

on default of the corporation so to keep in repair,

Ld. Rayd. 922; *Rex* v. *Liverpool*, 3 East. 86; *Rex* v. *Oxfordshire*, 4 B. & C. 194; *Rex* v. *Ecclesfield*, 1 B. & Al. 348; *Rex* v. *Eastrington*, 5 A. & E. 765; *Rex* v. *Leake*, 5 B. & Ad. 469-482; *Reg.* v. *Inhabitants of Lordsmere*, 19 L. J. M. C. 215; *Healey* v. *Corporation of Batley*, L. R. 19 Eq. 375; *Reg.* v. *Horley*, 8 L. T. N. S. 382. See also *Reg.* v. *Kitchener*, L. R. 2 C. C. 88. It would seem that in this country there is a similar common law obligation. *Wellington* v. *Wilson*, 14 U. C. C. P. 304; *Harrold* v. *Simcoe*, 16 U. C. C. P. 43; *S. C.*, 18 U. C. C. P. 9; *Reg.* v. *Yorkville*, 22 U. C. C. P. 431; *Grassick* v. *Toronto*, 39 U. C. Q. B. 306. But see *Wallis* v. *Assiniboia*, 4 Manitoba Rep. 89, where it was held by Taylor, J., on a review of the cases, that a municipality is not responsible civilly for damages occasioned by defective highways or bridges, unless made so by statute. "Apart from sec. 337 (same as this section) which imposes the burden of repairing the roads within the respective municipalities in which they are situated, the common law duty would apply to all such bodies to repair the roads which are within their jurisdiction, and for which they can raise the funds required for the purpose." *Per* Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 304. "We are of opinion for the reasons hereafter given and upon the authority of decided cases, that there is a clear common law liability resting on the defendants both civilly and criminally." *Per* Wilson, J., in *Harrold* v. *Simcoe*, 16 U. C. C. P. 50. "I take it that a corporation, charged with or assuming the custody of a road or bridge, and having funds or the means of obtaining funds, by exacting toll or levying a rate upon the members of the corporation, with which to make repairs, is at common law bound to keep such road or bridge in an efficient state. *Per* VanKoughnet, C., 18 U. C. C. P. 14. In the United States such a duty is altogether the creature of statute. *Morey* v. *Newfane*, 8 Barb. (N. Y.) 645; *People* v. *Commissioners of Highways*, 7 Wend. (N. Y.) 474; *Chidsey* v. *Canton*, 17 Conn. 475; *Bigelow* v. *Randolph*, 14 Gray (Mass.) 541; *Hill* v. *Boston*, 122 Mass. 344. See further, note z to sec. 535. Then, what is *repair?* It is impossible to give a definition which will apply to all cases. In general terms non-repair may be said to be any defect in a highway which renders it unsafe for ordinary travel. See *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Hixon* v. *Lowell*, 13 Gray (Mass.) 59; *Barber* v. *Roxbury*, 11 Allen (Mass.) 318, 320; *Hewison* v. *New Haven*, 34 Conn. 136, 142. As to liability for non-repair, see *City of Halifax* v. *Walker*, Cassell's Dig. 98; *Colchester* v. *Watson*, *Ib.*, 99; *Town of Portland* v. *Griffiths*, 11 S. C. R. 333. In determining the question of non-repair, the nature of the country, the character of its roads, and the care usually exercised by municipalities in reference to such roads, must all be taken into account. *Hull* v. *Richmond*, 2 Wood & M. 337. A new side line or concession line, opened in a township thinly scattered, could scarcely be expected to be found in as perfect a condition as an old highway in a well settled township. *Per* Robinson, C. J., in *Colbeck* v. *Brantford*, 21 U. C. Q. B. 276. See further *Reg.* v. *Board of Guardians, &c.*, 8 L. T. N. S. 383; *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 73. The obligation expressed by the general phrase "keep in repair," is satisfied by keeping the road in such a state as is reasonably safe and sufficient for the requirements of the particular locality, and in deciding whether any municipal council is chargeable with default, regard must be had to such con-

the corporation shall, besides being subject to any punish-

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siderations as the means at the command of the council and the nature of the ordinary traffic of the locality. *Lucas* v. *Moore*, 3 A. R. 602. See also *Maxwell* v. *Clarke*, 4 A. R. 460. "A municipal corporation is not an insurer against accidents upon the streets and sidewalks; nor is every defect therein, though it may cause the injury sued for, actionable. It is sufficient, we think, if the streets (which include the sidewalks and bridges thereon) are in a reasonably safe condition for travel in the ordinary modes, by night as well as by day, and whether they are so or not is a practical question to be determined in each case by its particular circumstances." *Dillon* on Municipal Corporations, 3rd ed. sec. 1019. It must be a question of fact altogether for a jury to say whether the place alleged to be out of repair is dangerous, and, if so, from what causes; and if from a natural cause or process, whether the persons liable to repair the road could reasonably and conveniently, as regards expenditure and labour, have made the road *safe for use*. *Caswell* v. *St. Mary's Plank Road Co.*, 28 U. C. Q. B. 247, 254. It is a question of fact depending on the evidence whether the municipality have been guilty of negligence or failed in their reasonable duty. *Steinhoff* v. *Kent*, 14 A. R. 12. See also *Walton* v. *York*, 6 A. R. 181. The season of the year, the place of the accident, the hour of the day or night, the manner and nature of the accident must all be taken into consideration in determining the question. See *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Ringland* v. *Toronto*, 23 U. C. C. P. 98; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487; *Ayre* v. *Toronto*, 30 U. C. C. P. 225; *Sessions* v. *Newport*, 23 Vt. 9; *Merrill* v. *Hampden*, 26 Me. 234; *Providence* v. *Clapp*, 17 How. (U.S.) 161; *Fitz* v. *Boston*, 4 Cush. (Mass.) 365; *Johnson* v. *Haverhill*, 35 N. H. 74; *Winship* v. *Enfield*, 42 N. H. 179; *Ring* v. *Kohoes*, 77 N. Y. 83. The cause of the accident may be either structural defect or inert matter left either upon or over the road. *Davis* v. *Bangor*, 42 Me. 522. In some cases it has been held that the defect must be such as to render the corporation liable to an indictment for a nuisance. *Ringland* v. *Toronto*, 23 U. C. C. P. 93; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487; *Ray* v. *Petrolia*, 24 U. C. C. P. 73; *Boyle* v. *Dundas*, 25 U. C. C. P. 420; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Howard* v. *Bridgewater*, 16 Pick. (Mass.) 189; *Merrill* v. *Hampden*, 26 Me. 234; but however desirable that may be as a rule of decision it has not been adopted in our Courts. *Burns* v. *Toronto*, 42 U. C. Q. B. 560; see further, *Goldthwait* v. *East Bridgewater*, 5 Gray (Mass.) 61. It is not every nuisance which obstructs, hinders, or delays travellers on a highway, which constitutes non-repair of the highway. *Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140. The traveller may be obstructed by a concourse of people, by a crowd of carriages, his horse may by frightened by the discharge of guns, the explosion of fireworks, by the falling of a signboard insecurely fastened, by military music, by the presence of wild animals, and yet the highway not be in any legal sense out of repair. *Hixon* v. *Lowell*, 13 Gray (Mass.) 59; *Davis* v. *Bangor*, 42 Me. 522; *French* v. *Brunswick*, 21 Me. 29; *Taylor* v. *Peckham*, 8 Rh. Is. 349; *S. C.*, 5 Am. 578; *Jones* v. *Boston*, 104 Mass. 75; *S. C.*, 6 Am. 194; *Hewison* v. *New Haven*, 9 Am. 34; *Little* v. *City of Madison*, 24 Am. 435; *Cole* v. *Newburyport*, 23 Alb.

L. J. 3; see further, note *p* to sub-s. 27 of sec. 496. "Any object in, upon or near, the travelled path, which would necessarily obstruct or hinder one in the use of the road for the purpose of travelling thereon, or which, from its nature and position, would be likely to produce that result, would generally constitute a defect in the highway." *Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140. In England it is held that the public are to be restricted to the use of the travelled highway. "Although the highway be of varying and unequal width between fences on each side, the right of passage or way, *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as the highway, and are not confined to the parts which may be metalled or kept in repair for the more convenient use of carriages or foot passengers." *Per* Martin, B., in *Reg* v. *United Kingdom Telegraph Co.*, 3 F. & F. 74; see also Rev. Stat. c. 159, s. 138, and *Tutill* v. *West Ham Local Board of Health*, L. R. 8 C. P. 447; *Reg.* v. *Fitzgerald*, 39 U. C. Q. B. 297. It is said that in the United States in general the duty to keep in repair only extends to the road actually used for travel, provided it is wide enough to be safe, and is in its actual condition, reasonably, safe for travellers who use due care. See *Dillon* on Municipal Corporations, 3rd ed., sec. 1008. In a recent work the law is thus stated: "Making due allowance for the different conditions in villages and cities, and in more or less travelled thoroughfares; also for necessary obstruction of streets from time to time for various purposes, as before alluded to, the rule laid down in a a recent New York case is a safe one: 'As a general rule, the public are entitled not only to free passage along the streets, but to a free passage over each and every portion of every street.'" *Morrill* on Actions for Negligence in the care of Highways p. 67. The duty to keep the road in repair extends as much to sidewalks for the use of pedestrians as to the travelled way for the use of carriages. *Copeland* v. *Blenheim*, 9 O. R. 19; *Portland* v. *Griffiths*, 11 S. C. R. 333; *Burns* v. *Toronto*, 42 U. C. Q. B. 560; *Hatton* v. *Windsor*, 34 U. C. Q. B. 487; *May* v. *Petrolia*, 26 U. C. C. P. 73; *Boyle* v. *Dundas*, 25 U. C. C. P. 420. See also *Dillon*, on Municipal Corporations, 3rd ed., sec. 1008. So to street crossings. *Raymond* v. *Lowell*, 6 Cush. (Mass.) 524; *Coombs* v. *Purrington*, 42 Me. 332; *Baker* v. *Savage*, 45 N. Y. 191. But it is not a duty to plank from each man's house across a ditch to the street, and keep such planks in repair. *McCarthy* v. *Oshawa*, 19 U. C. Q. B. 245. Where the end of a side-walk was some four inches higher than the crossing, it was held that there was evidence of negligence. *Goldsmith* v. *London*, 11 O. R. 26. Corporations of townships may pass by-laws setting apart so much of any highway as they may deem necessary for the purpose of a footpath and may prevent persons travelling thereon on horseback or in vehicles. Sec. 567, sub-s. 4; but see *Peck* v. *Batavia*, 32 Barb. (N. Y.) 634. Should a railing or other barrier be necessary to the safety of passengers, it may be held to be the duty of the corporation to provide the same. *Toms* v. *Whitby*, 35 U. C. Q. B. 195; 37 U. C. Q. B. 100; *Sherwood* v. *Hamilton*, *Ib.* 410; *Walton* v. *York*, 6 A. R. 181; *Chapman* v. *Cook*, 14 Am. 686; *Williams* v. *Clinton*, 28 Conn. 264; *Bunham* v. *Boston*. 10 Allen. (Mass.) 290; *Drury* v. *Worcester*, 21 Pick. (Mass.) 44; *State* v. *Cornville*, 43 Me. 427; *Kellogg* v. *Northamp-*

ton, 8 Gray (Mass.) 505; *Munson* v. *Derby*, 9 Am. 332. But the duty is not an absolute one. *Gilchrist* v. *Garden*, 26 U. C. C. P. 1; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Wilson* v. *Halifax*, L. R. 3 Ex. 114; see also *Cornwell* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; *Crafter* v. *Metropolitan R. W. Co.*, L. R. 1 C. P. 300. See also s. 550, sub-s. 4. A duty is cast upon those who in the exercise of statutory powers divert a footpath to protect reasonably careful persons using the footpath from injury through going astray at the point of diversion. *Hurst* v. *Taylor*, 14 Q. B. D. 918. There is no duty to light a highway with lamps. *Randall* v. *Eastern, R. W. Co.*, 8 Am. 327. But when the corporation assumes to light a street and does it so negligently that a person is injured in consequence by falling into an excavation, the character of the light may be shewn as one of the elements to establish negligence. *Freeport* v. *Isbell*, 25 Am. 327. Allowing snow to lie on a macadamised road does not, as a general rule, come under the idea of allowing a road to be out of repair. *Stewart* v. *Woodstock and Huron Road Co.* 15 U.C.Q.B. 427. There is no such thing as an absolute right against the act of God and the processes of nature. *Per* Maule, J., in *Reg.* v. *Hornsea*, 2 C. L. R. 599. But even in the case of snow or ice, it is for a jury to say, under the particular circumstances of the place, season, &c., if the non-removal was non-repair. *Caswell* v. *St. Mary's, &c., Road Co.*, 28 U. C. Q. B. 247. In *Providence* v. *Clapp*, 17 How. (U. S.) 161, the Court held that after a fall of snow it was the duty of the city to use ordinary care and diligence to restore the walk to a reasonably safe and convenient state, and that it was for the jury to find whether it was in such state or not. Mr. Justice Nelson, in delivering judgment, said: "The just rule of responsibility, and the one we think prescribed by the statute, whether the obstruction be by snow or any other material, is the removal or abatement necessary so as to render the highway, street, or sidewalk at all times safe and convenient, regard being had to its locality and uses." See *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *Loker* v. *Brookline*, 13 Pick. (Mass.) 343; *Shea* v. *Lowell*, 8 Allen (Mass.) 136; *Street* v. *Holyoke*, 105 (Mass.) 82; *Landolt* v. *Norwich*, 6 Am. Law Reg. N. S. 383; 37 Conn. 615; *Green* v. *Danby*, 12 Vt. 338; *Savage* v. *Bangor*, 40 Me. 176; *Hall* v. *Manchester*, 40 N. H. 410; *Billings* v. *Worcester*, 3 Am. 460. See also *Reg* v. *Williams*, 9 App. Cas. 418. The mere fact that a highway is slippery from ice upon it, so that a person may be liable to slip and fall while using ordinary care, if the way is properly and well constructed, and there is no such accumulation of ice or snow as to constitute an obstruction, and nothing in the construction or shape of the way which occasions any special liability to formation or accumulation of ice is not a defect or want of repair which will authorize a jury to find that it is not safe or convenient for travellers. *Staunton* v. *Springfield*, 12 Allen, (Mass.) 566. See also *Johnson* v. *Lowell*, 12 Allen (Mass.) 572; *Nason* v. *Boston*, 14 Allen (Mass.) 508; *Gilbert* v. *Roxbury*, 100 Mass. 185; *Cook* v. *Milwaukee*, 1 Am. 183; see also *Durkin* v. *Troy*, 61 Barb. 437; *Ringland* v. *Toronto*, 23 U. C. C. P. 93. This doctrine only goes the length of holding that a way properly constructed and kept in such a condition as to be reasonably safe and convenient for travel at all seasons of the year, is not defective by reason of the fact that it is covered with a smooth and even surface of ice, which renders it

slippery; but if the ice be allowed to remain in such an uneven and rounded condition on the surface that a person could not walk over it, using due care, without being in danger of falling down, the municipality may be held liable. *Gordon* v. *Belleville*, 15 O. R. 26; *Bleakley* v. *Prescott*, 12 A. R. 637; See also *Morrill* on Actions for Negligence in the care of Highways pp. 158-160. "In the case before us the question was, whether there was such evidence of non-repair that the jury might reasonably and properly conclude that there was negligence in the corporation not having had removed the piece of frozen snow or ice complained of, and that, without any want of reasonable and ordinary care upon the part of the plaintiff, the accident could and did happen, &c. *Per* Gwynne, J., in *Ringland* v. *Toronto*, 23 U. C. C. P. 100. See *Quincy* v. *Barker*, 81 Ill. 300; *Chicago* v. *Bixby*, 84 Ill. 82. In actions for slipping on a sidewalk, evidence that others had met with accidents at the same place was held inadmissible. *Hubbard* v. *Concord*, 35 N. H. 52; *Collins* v. *Dorchester*, 6 Cush. (Mass.) 396; *Aldrich* v. *Pelham*, 1 Gray (Mass.) 510. "Speaking for myself, I think that municipal corporations have often been too hardly and strictly dealt with as to the repair of roads. It is impossible for them so to perform their duties as to repairs and fences, &c., as to meet all the demands from time to time on them for every conceivable accident in every spot of highway throughout their jurisdiction. *Per* Hagarty, C. J., in *Boswell* v. *Yarmouth*, 4 A. R. 360. The following may be mentioned as a few from the many cases as to what have been held to be particular defects or want of repair: A pile of stones, *Foreman* v. *Canterbury*, L. R. 6 Q. B. 214; *Bigelow* v. *Weston*, 3 Pick. (Mass.) 267; *Smith* v. *Wendell*, 7 Cush. (Mass.) 498; a rock, *Card* v. *City of Ellsworth*, 20 Am. 722; sticks of timber, logs, &c. *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Snow* v. *Adams*, 1 Cush. (Mass.) 443; *Davis* v. *Bangor*, 42 Me. 522; a tent, *Ayer* v. *Norwich*, 12 Am. 396; a steam roller, *Young* v. *New Newhaven*, 12 Am. 490 n; pole, *Mochler* v. *Shaftsborough*, 14 Am. 634; but not a broken-down waggon, *Rounds* v. *Stratford*, 26 U. C. C. P. 11; posts, *Soule* v. *Grand Trunk R. W. Co.* 21 U. C. C. P. 308; *Coggswell* v. *Lexington*, 4 Cush. (Mass.) 307; see further, *Ray* v. *Manchester*, 46 N. H. 59; holes or excavations, *Ridgway* v. *Toronto*, 28 U. C. C. P. 579; *Duck* v. *Toronto*, 5 O. R. 295; *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; *Congreve* v. *Morgan*, 5 Duer. 495; *Doherty* v. *Waltham*, 4 Gray (Mass.) 596; *Batty* v. *Duxbury*, 24 Vt. 155; *Murphy* v. *Gloucester*, 105 Mass. 470; *Requa* v. *Rochester*, 45 N. Y. 129; *Niblett* v. *Nashville*, 12 Heisk. (Tenn.) 684; loose planks, projections, or other inequalities of surface, *Irwin* v. *Bradford*, 22 U. C. C. P. 19, 421; *Hall* v. *Manchester*, 40 N. H. 410; *Winn* v. *Lowell*, 1 Allen (Mass.) 177; *Raymond* v. *Lowell*, 6 Cush. (Mass.) 524; *Smith* v. *Wendell*, 7 Cush. (Mass.) 498. Where the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway the valve cover projected an inch above it, and the plaintiff's horse using the highway stumbled over the valve cover and was hurt, it was held in an action against the defendants, who were both the water authority and the highway authority, that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway. *Kent* v. *Worthing Local Board*, 10 Q. B.

D. 118. But see *Moore* v. *Lambeth Waterworks Co.*, 17 Q. B. D. 462, where this case was questioned. Any object upon or near the travelled way, which in its nature is calculated to frighten horses of ordinary gentleness, may be held, under some circumstances, to constitute a defect in the way itself. *Morse* v. *Richmond*, 41 Vt. 435; *Chamberlain* v. *Enyfield*, 43 N. H. 356; *Lund* v. *Tyngsboro'*, 11 Cush. (Mass.) 563; *Dimock* v. *Suffield*, 30 Conn. 129; *Chicago* v. *Hoy*, 75 Ill. 530; *Fritsch* v. *Alleghany*, 20 Alb. L. J. 373; *Cushing* v. *Bedford*, 125 Mass. 526; but see *Maxwell* v. *Clarke*, 4 A. R. 460; *Horton* v. *Taunton*, 97 Mass. 266; *Kingsbury* v. *Dedham*, 13 Allen (Mass.) 186; *Cook* v. *Charlestown*, *Ib.* 180 n; *Keith* v. *Easton*, 2 Allen (Mass.) 552; see also *Corby* v. *Hill*, 4 C. B. N. S. 556; *Pickhard* v. *Smith*, 10 C. B. N. S. 470; *Tarry* v. *Ashton*, 1 Q. B. D. 314; *Soule* v. *Grand Trunk R. W. Co.* 21 U. C. C. P. 308; *Vars* v. *Grand Trunk R. W. Co.*, 23 U. C. C. P. 143. The onus is on the plaintiff to give affirmative evidence of negligence. *Lester* v. *Pittsford*, 7 Vt. 158; *Perkins* v. *Concord R. W. Co.*, 44 N. H. 223. Evidence to shew that other horses besides the plaintiffs were frightened at the object, is admissible. *Darling* v. *Westmoreland*, 13 Am. 55. The jury are not to infer a defect on the highway at a particular time and place merely from the fact that an injury was sustained at that time and place. *Church* v. *Cherryfield*, 33 Me. 460; *Sherman* v. *Kortright*, 52 Barb. (N. Y.) 267; *Collins* v. *Dorchester*, 6 Cush. (Mass.) 396; *Packard* v. *New Bedford*, 9 Allen (Mass.) 200; *Calkins* v. *Hartford*, 33 Conn. 57; but see *Kearney* v. *London, Brighton, &c. R. W. Co.*, L. R. 5 Q. B. 411; L. R. 6 Q. B. 759; *Feital* v. *Middlesex R. W. Co.* 12 Am. 720; *Mullen* v. *St. Johns*, 15 Am. 530. If the evidence is as consistent with the absence as with the presence of negligence, the plaintiff is not entitled to recover. *Deverill* v. *Grand Trunk R. W. Co.*, 25 U. C. Q. B. 517; see also *Cotton* v. *Wood*, 8 C. B. N. S. 568; *Toomey* v. *London, Brighton, &c. R. W. Co.*, 3 C. B. N. S. 146; *Cornman* v. *Eastern Counties R. W. Co.*, 4 H. & N. 781; *Crafter* v. *Metropolitan R. W. Co.*, L. R. 1 C. P. 300; *Jackson* v. *Hyde*, 28 U. C. Q. B. 294; *Henderson* v. *Barnes*, 32 U. C. Q. B. 176. Negligence is want of care. Want of ordinary care is the true measure of liability. *Johnston* v. *Charleston*, 16 Am. 721. A corporate body never can either take care or neglect to take care except through its servants. If such a body, by its servants, have the means of knowing that a highway is unfit for travel, and are negligently ignorant of its state, they are guilty of negligence. See *Mersey Dock and Harbour Co* v. *Penhallow*, 7 H. & N. 329; L. R. 1 H. L. Cas. 93; see also *Thompson* v. *North Eastern R. W. Co.*, 3 L. T. N. S. 618; *Submarine Telegraph Co.* v. *Dickson*, 15 C. B. N. S. 759; *Adair* v. *Kingston*, 27 U. C. C. P. 126; *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410; *Boyle* v. *Dundas*, 27 U. C. C. P. 129; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Macdonald* v. *South Dorchester*, 29 U. C. C. P. 249; *Rapho and West Hempfield Townships* v. *Moore*, 8 Am. 202. It is no defence that they appointed a proper overseer of highways and gave him means and authority to keep the road in good order. The corporation are, as it were, themselves the overseers of the highway, and on this principle bound to keep it in repair. They have not only the duty thrown upon them of keeping highways in repair, but have all necessary powers given to them for enabling them to per-

form that duty. The corporation must at their peril answer for the consequences of the duty not being performed. The negligence of their officers or servants is no answer. *Per* Robinson, C. J., in *Colbeck* v. *Brantford*, 21 U. C. Q. B. 276; see also *Ridgway* v. *Toronto*, 28 U. C. C. P. 579; *Tiffin* v. *McCormick*, 34 Ohio St. 638; *Palmer* v. *Lincoln*, 5 Neb. 136. Nor is it any excuse that the alleged defect arose from the necessary repairs of the highway; for in such a case there should be a light or other signal to warn travellers of existing danger in the use of the way. *Buffalo* v. *Holloway*, 3 Seld. (N. Y.) 493; *Storrs* v. *Utica*, 17 N. Y. 104; *Milwaukee* v. *Davis*, 6 Wis. 377; *Pettigrew* v. *Evansville*, 25 Wis. 223; *Detroit* v. *Corey*, 9 Mich. 165; *Nashville* v. *Browne*, 24 Am. 289; *Savannah* v. *Waldner*, 49 Ga. 316. Where a statutory obligation is imposed on a person, he is liable for any injury that arises to others in consequence of its having been negligently performed, and this whether it was performed by himself or by a contractor employed by him. *Grey* v. *Pullen*, 5 B. & S. 970; *S. C.* in error, *Ib.* 980. If the defect arise otherwise than from faulty structure, and from some act other than the direct conduct of the defendants or their servants, and be a recent defect, it is generally necessary to shew that defendants or their servants had knowledge thereof, or were negligently ignorant of it. See *Dillon* on Municipal Corporations, 3rd ed. sec. 1026, note 3. See also *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113. Notice may be inferred from the notoriety of the defect, and from its continuance for such a length of time as to lead to the presumption that the proper officers of the municipality did in fact know, or with proper vigilance and care might have known, the fact. This latter is sufficient, because this degree of care and vigilance they are bound to exercise; and therefore if, in point of fact, they do not know of such defect, when by ordinary and due vigilance and care they would have known it, they must be responsible, as if they had actual notice. *Per* Shaw, C. J., in *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; see further *Castor* v. *Uxbridge*, 30 U. C. Q. B. 113; *Ridgway* v. *Toronto*, 28 U. C. C. P. 579; *Duck* v. *Toronto*, 5 O. R. 295; *Dewey* v. *Detroit*, 15 Mich. 307; *Mayor* v. *Sheffield*, 4 Wall. (U. S.) 189; *Serrot* v. *Omaha*, 1 Dill. C. C. R. (U. S.) 312; *How* v. *Plainfield*, 41 N. H. 135. If the defect be palpable, dangerous, and has existed for a long time, the jury may very properly infer either negligent supervision and ignorance consequent upon and chargeable to such neglect, or notice of the defect and a disregard of the duty to repair it. *Manchester* v. *Hartford*, 30 Conn. 118; see further *Bloomington* v. *Bay*, 42 Ill. 503; *Howe* v. *Lowell*, 101 Mass. 99; *Donaldson* v. *Boston*, 16 Gray (Mass.) 508; *Colley* v. *Westbrook*, 57 Me. 181; 2 Am. 30. Where an injury was produced by some sudden and unexpected cause, it was held that the corporation were not liable till they had a reasonable opportunity to repair. *Hubbard* v. *Concord*, 35 N. H. 52; *Barton* v. *Syracuse*, 36 N. Y. 54; *Springfield* v. *LeClaire*, 49 Ill. 476. Notice to a citizen is not notice to the corporation. *Donaldson* v. *Boston*, 16 Gray (Mass.) 508, although held otherwise in Maine, *Springer* v. *Bowdoinham*, 7 Greenl. (Me.) 442; *Mason* v. *Ellsworth*, 32 Me. 271. Speaking of a sewer, Morrison, J.. said, "It did not appear, however, when the mud accumulated in the culvert or when the stone fell at its mouth, the mere existence of these obstructions was not, in my opinion, enough to establish negligence. There was

Limitation of actions.

ment provided by law, be civilly responsible (*q*) for all dam-

no evidence that the defendants or their officers had any notice of these obstructions, nor did it appear that they were of so notorious a character, or had continued so long as to charge the defendants with constructive notice of them." *Bateman* v. *Hamilton*, 33 U. C. Q. B. 251. But as to sewers, see *Barton* v. *Syracuse*, 36 N. Y. 54: *Springfield* v. *LeClaire*, 49 Ill. 476. There is no presumption of law as to notice. It is for a jury to decide whether from the circumstances, there was notice. *Colley* v. *Inhabitants*, 2 Am. 30; *Hall* v. *Lowell*, 10 Cush. (Mass.) 260; *Stanton* v. *Springfield*, 12 Allen (Mass.) 566; *Mosey* v. *Troy*, 61 Barb. (N. Y.) 580; *Alletson* v. *Chichester*, L. R. 10 C. P. 319; *Chicago* v. *McCarthy*, 75 Ill. 602; *Hayes* v. *New York*, 74 N. Y. 264. In some States of the Union existence of the defect for twenty-four hours, *Brady* v. *Lowell*, 3 Cush. (Mass.) 121, or express notice, *Tripp* v. *Lyman*, 37 Me. 250, is necessary by statute before there can be any right of action against the corporation. Where the encroachment of the sea destroyed the road, so that the subject of repair was not in existence, it was held that there was no obligation at an enormous cost to rebuild the road. *Reg.* v. *Bamber*, 5 Q. B. 279; *Reg.* v. *Inhabitants of Hornsea*, Dears. C. C. 291; but see *Reg.* v. *Greenhow*, 1 Q. B. D. 703. If the cost of rebuilding the road or making the necessary repair would exceed the statutable limit of taxation it may be that there would be no obligation to repair. See *Grant* v. *Sligo Harbour Commissioners*, L. R. 11 Ir. C. L. R. 190; *Butler* v. *Bray Commissioners*, *Ib.* 181. But in such a case it would it is apprehended be the duty of the corporation so to close up the road that there could be no danger in using or attempting to use it. *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9. See further, note *a* to sec. 535.

(*q*) Although non-repair may be one subject of an indictment, it is not in the absence of special damage, peculiar to the plaintiff, or of some statutable provision giving a right of action the subject of a civil action. *Butler* v. *Bray Commissioners*, L. R. 11 Ir. C. L. R. 181; *Gibson* v. *Mayor of Preston*, L. R. 5 Q. B. 218; *Reg.* v. *Mayor &c., of Poole* 19 Q. B. D. 602; but see *Foreman* v. *Mayor of Canterbury*, L. R. 6 Q. B. 214; *White* v. *Hindley Local Board*, L. R. 10 Q. B. 219. Such is also the rule in the United States. *Detroit* v. *Blakeley*, 4 Am. 456; *White* v. *County of Bond*, 11 Am. 65, and cases in note. Here the action is given in express terms. *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113. In such an action it must be made to appear that the alleged defect was the direct and proximate cause of the injury. *Adams* v. *Carlisle*, 21 Pick. (Mass.) 146; *Holman* v. *Townsend*, 13 Mete. (Mass.) 297; *Lund* v. *Tyngsboro'*, 11 Cush. (Mass.) 563; *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *Marble* v. *Worcester*, 4 Gray. (Mass.) 395; *Tuttle* v. *Holyoke*, 6 Gray (Mass.) 447; *Stickney* v. *Maidstone*, 30 Vt. 738; *Sears* v. *Dennis*, 105 Mass. 310; *Manderschid* v. *Dubuque*, 29 Iowa 73. The obligation to keep in repair is only as against such accidents as are likely to and actually do occur in using a highway for the purpose of travel. *Per* Barrett, J., in *Sykes* v. *Pawlett*, 43 Vt. 446; 5 Am. 299. If the violence of the horse, acting without guidance or discretion, be the immediate cause of the injury, the cases are conflicting as to whether or not the corporation is liable. The decisions on the point in Maine,

ages sustained by any person by reason of such default, but

New Hampshire, and Massachusetts are reviewed in *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410. The rule adopted in this Province is, that where two causes combine to produce the injury, both in their nature proximate, the one being the defect in the highway and the other some occurrence for which neither party is responsible, such as the accident of a horse running away beyond control, the corporation is liable, provided the injury would not have been sustained but for the defect in highway. *Toms* v. *Whitby*, 37 U. C. Q. B. 100; *Sherwood* v. *Hamilton*, 37 U. C. Q. B. 410; *Castor* v. *Uxbridge*, 39 U. C. Q. B. 113; *Bliss* v. *Boeckh*, 8 O. R. 451. But there can be no recovery if the injury be attributable to any unskilfulness or want of care on the part of the driver. *Flower* v. *Adam*, 2 Taunt. 314; *Cassedy* v. *Stockbidge*, 21 Vt. 391; *Peoria Bridge Association* v. *Loomis*, 20 Ill. 235; *Alger* v. *Lowell*, 3 Allen (Mass.) 402; *Stuart* v. *Machias Port*, 48 Me. 477; *Marriot* v. *Stanley*, 1 M. & G. 568. So if the accident really and substantially arose by reason of some defect in the plaintiff's waggon, harness, &c. *Jenks* v. *Wilbraham*, 11 Gray (Mass.) 142; *Allen* v. *Hancock*, 16 Vt. 230; *Bigelow* v. *Rutland*, 4 Cush. (Mass.) 247; *Moore* v. *Abbot*, 32 Me. 46; *Farrar* v. *Greene*, *Ib.* 574; see also *Winship* v. *Enfield*, 42 N. H. 197; *Hunt* v. *Pownall*, 9 Vt. 411. So if it be shewn that the plaintiff in any manner, by his own want of care, directly contributed to the happening of the accident. *Bradley* v. *Brown*, 32 U. C. Q. B. 463; *Butterfield* v. *Forrester*, 11 East 60; *Woolf* v. *Beard*, 8 C. & P. 373; *Smith* v. *Smith*, 2 Pick. (Mass.) 621; *Bridge* v. *Grand Junction R. W. Co.*, 3 M. & W. 244; *Waite* v. *North Eastern R. W. Co.*, E. B. & E. 719; *Baker* v. *Portland*, 58 Me. 199; 4 Am. 274; *Tuff* v. *Warman*, 2 C. B. N. S. 740; 5 C. B. N. S. 573; *Witherley* v. *Regent's Canal Co.*, 12 C. B. N. S. 2; *Edgar* v. *Northern R. W. Co.*, 11 A. R. 452. The rule operates also in the case of children of tender age. *Mangan* v. *Atterton*, L. R. 1 Ex. 239; *Singleton* v. *Eastern Counties R. W. Co.*, 7 C. B. N. S. 287. See as to the onus of proof of contributory negligence *Wakelin* v. *London and South Western R. W. Co.*, 12 App. Cas. 41. The question of contributory negligence arises when both parties are substantially at fault, and when the fault of each contributes to the disaster. *Per* Cleasby, B, in *Gee* v. *Metropolitan R. W. Co.*, L. R. 8 Q. B. 177. If there be no dispute as to the fact, the question of contributory negligence becomes a question of law, and the Court may properly nonsuit. *Winckler* v. *Great Western R. W. Co.*, 18 U. C. C. P. 250, 262: *Nicholls* v. *Great Western R. W. Co.*, 27 U. C. Q. B. 382; *Rastrick* v. *Great Western R. W. Co.*, *Ib.* 396; see also *Bridges* v. *North London R. W. Co.*, L. R. 6 Q. B. 377; *Bellfontaine R. W. Co.* v. *Hunter*, 33 Ind. 335; *S. C.*, 5 Am. 201; *Adams* v. *Lancashire and Yorkshire R. W. Co.*, L. R. 4 C. P. 739; *Gee* v. *Metropolitan R. W. Co.*, L. R. 8 Q. B. 177; *Cornish* v. *Toronto Street R. W. Co.*, 23 U. C. C. P. 355; *Blackwell* v. *Toronto Street R. W. Co.*, 38 U. C. Q. B. 172: *Maw* v. *King and Albion*, 8 A. R. 248. Whether there is reasonable evidence to be left to the jury of negligence occasioning the injury complained of is a question for the Judge. It is for the jury to say whether and how far the evidence is to be believed. *Meiropolitan R. W. Co.* v. *Jackson*, 3 App. Cas. 193*a*. See also *Dublin, Wicklow, and Wexford R.*

the action must be brought within three months after the

W. Co. v. *Slattery*, 3 App. Cas. 1155. It is not such negligence as to prevent a recovery, that the traveller did not know the road, and yet proceeded on a dark night. *Williams* v. *Clinton*, 28 Conn. 264. So driving in a violent storm through the streets of a city with which the driver was unacquainted was held not of itself to be such negligence as to prevent recovery by him for injuries sustained through defect in the street. *Milwaukee* v. *Davis*, 6 Wis. 377. Nor driving on the wrong side of the road. *Damon v. Inhabitants of Scituate*, 20 Am. 315. Being blind, halt, or deaf is not *per se* to be taken as evidence of contributory negligence. All persons, however blind, halt, or deaf, have a right to act on the assumption that the highway is reasonably safe. *Davenport* v. *Ruckman*, 37 N. Y. 568; *Renwick* v. *New York Central R. W. Co.*, 36 N. Y. 133; *Sleeper* v. *Sandown*, 52 N. H. 244. "The streets and sidewalks are for the benefit of all conditions of people; and all have the right, in using them, to assume that they are in good condition, and to regulate their conduct upon that assumption. A person may walk or drive in the darkness of the night, relying upon the belief that the corporation has performed its duty, and that the street or walk is in a safe condition. He walks by a faith justified by law, and if his faith is unfounded, and he suffers an injury, the party in fault must respond in damages. So one whose sight is dimmed by age, or a near-sighted person whose range of vision was always imperfect, or one whose sight has been injured by disease, is each entitled to the same rights, and may act on the same assumption. Each, however, is bound to know that prudence and care are in turn required of him, and that if he fail in this respect, any injury he may suffer is without redress" *Per* Hunt, C. J., in *Davenport* v. *Ruckman*, 37 N. Y. 573. It is not, however, too much to ask of persons of defective sight greater care than is required of persons free from such infirmity. *Winn* v. *Lowell*, 1 Allen (Mass.) 177; see also *Bridges* v. *North London R. W. Co.*, L. R. 6 Q. B. 377, 397; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487. No person is required to have perfect vision, or to be vigilant in the discovery of defects which ought not to exist. *Thompson* v. *Bridgewater*, 7 Pick. (Mass.) 188. No person is in fault in neglecting to observe and avoid a defect not so plain and obvious as to be necessarily observable by one in the possession of ordinary faculties, travelling at an ordinary pace. *Cox* v. *Westchester Turnpike Co.*, 33 Barb. (N. Y.) 414; *Frost* v. *Waltham*, 12 Allen (Mass.) 85. The fact that the traveller knew the danger, or was familiar with the road, is a circumstance to be considered in determining the question whether the plaintiff contributed by his own want of care to the accident. *Clayards* v. *Dethick*, 12 Q. B. 439; *Hutton* v. *Windsor*, 34 U. C. Q. B. 487; *Copeland* v. *Blenheim*, 9 O. R. 19; *Gordon* v. *Belleville*, 15 O. R. 26; *Reed* v. *Northfield*, 13 Pick. (Mass.) 94; *Humphreys* v. *Armstrong County*, 56 Pa. St. 204; *Smith* v. *Lowell*, 6 Allen (Mass.) 39; *Snow* v. *Housatonic R. W. Co.*, 8 Allen (Mass.) 441; *Frost* v. *Waltham*, 12 Allen (Mass.) 85; *Clark* v. *Lockport*, 49 Barb. (N. Y.) 580; *Whittaker* v. *West Boyleston*, 97 Mass. 273; *Fox* v. *Sackett*, 10 Allen (Mass.) 535. Such knowledge in some cases has been held sufficient to raise a presumption of negligence on the plaintiff's part, so as to require evidence to negative the presumption. *Fox* v. *Glasten-*

damages have been sustained. (*r*)

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bury, 29 Conn. 204; *Folsom* v. *Underhill*, 36 Vt. 580; *Wilson* v. *Charlestown*, 8 Allen (Mass.) 137; *Jacobs* v. *Bangor*, 16 Me. 187; *Brown* v. *Jefferson*, 16 Iowa 339; *Horton* v. *Ipswich*, 12 Cush. (Mass.) 488; *James* v. *San Francisco*, 6 Cal. 528. But see *Osborne* v. *London and N. W. R. W. Co.*, 21 Q. B. D. 220. Contributory negligence is not an answer to an indictment for manslaughter, in which the Queen, as representing the nation, is plaintiff. *Reg.* v. *Kew*, 12 Cox. C. C. 355.

(*r*) The question of the measure of damages is one that has produced more difficulty than perhaps any other branch of the law. *Per* Wilde, B., in *Gee* v. *Lancashire, &c., R. W. Co.*, 6 H. & N. 211; see also *Rowley* v. *London and N. W. R. W. Co.*, L. R. 8 Ex. 221. "We have no means of ascertaining by a fixed rule what shall be the limit of damages in such a case (action for negligence.) There is no principle which will apply equally to animals, goods and passengers. Damages in such a case must be left to the common sense of the jury, assisted by the presiding Judge." *Per* Mellor, J., in *Fair* v. *London and N. W. R. W. Co.*, 21 L. T. Rep. 326; see also *Collins* v. *Council Bluffs*, 32 Iowa 324; 7 Am. 200; *Chicago* v. *Langlass*, 4 Am. 603. "It would be most unjust if, whenever an accident occurs, juries were to visit the unfortunate cause of it with the utmost amount that they think an equivalent for the mischief done..... Scarcely any sum would compensate a labouring man for the loss of a limb; yet you do not, in such a case, give him enough to maintain him for life." *Per* Parke, B., in *Armsworth* v. *South Eastern R. W. Co.*, 11 Jur. 760. "Cases sometimes occur in which a jury, being overanxious to fully compensate a party, give damages so great as to induce the Court to interfere. In the great majority of cases, however, I am satisfied with the common sense views upon which they act." *Per* Cockburn, C. J., in *Fair* v. *London and N. W. R. W. Co.*, 21 L. T. N. S. 327. A new trial will be granted in an action for personal injuries sustained through the defendant's negligence when the damages found by the jury are so small as to shew that they must have omitted to take into consideration some of the elements of damage. *Phillips* v. *London and S. W. R. Co.*, 5 Q. B. D. 78. See also *Lambkin* v. *South Eastern R. W. Co.*, 5 App. Cas. 352. The rule is that the damages should be such as to furnish a *reasonable compensation* for the injury sustained. *Chicago* v. *Langlass*, 4 Am. 903; see also *Decatur* v. *Fisher*, 53 Ill. 407. In assessing the compensation to a person injured through the negligence of a municipal corporation, the jury should take into consideration two things—first, the pecuniary loss he sustains by the accident; second, the injury he sustains in his person, or his physical capacity for enjoying life. When they come to the consideration of pecuniary loss, they have to take into account not only his present loss, but his incapacity to earn a future improved income. Then as to the second ground, undoubtedly health is the greatest of all physical blessings, and to say that when it is utterly shattered, no compensation is to be made for it, is really perfectly extravagant. *Per* Cockburn, C. J., in *Fair* v. *London and N. W. R. W. Co.*, 21 L. T. N. S. 327. It is difficult to conceive a case against a municipal corporation which would justify the allowance of exemplary damages. *Chicago* v. *Mark*,

To what roads applicable.

(2) This section shall not apply to any road, street, bridge

2 Withrow 205; 49 Ill. 241. There is no limitation by this Statute as to the amount, or the elements for consideration in estimating the amount. In Maine a person can recover only for "bodily injury" or "damages to property." *Weeks* v. *Shirley*, 33 Me. 271; *Brown* v. *Watson*, 47 Me. 161; *Storer* v. *Bluehill*, 51 Me. 439. So in Connecticut and Massachusetts, the recovery can only be for damages "to the person or property." *Chidsey* v. *Canton*, 17 Conn. 475; *Beecher* v. *Derby Bridge Co.*, 24 Con. 491; *Canning* v. *Williamstown*, 1 Cush. (Mass.) 451; *Harwood* v. *Lowell*, 4 Cush. (Mass.) 310. In Vermont, however, any special damage sustained is recoverable. *Bailey* v. *Fairfield*, Brayt. Vt. 126. So in Wisconsin. *Weisenbury* v. *Appleton*, 26 Wis. 56; 7 Am. 39. If the action be brought under Lord Campbell's Act, (Rev. Stat. c. 135) the jury in estimating the damages, are restricted to compensation for pecuniary loss only, and cannot take into consideration mental or bodily suffering. *Armsworth* v. *South Eastern R. W. Co.*, 11 Jur. 758; *Blake* v. *Midland R. W. Co.*, 18 Q. B. 93; *Franklin* v. *South Eastern R. W. Co.*, 3 H. & N. 211; *Ducksworth* v. *Johnson*, 4 H. & N. 653; *Dalton* v. *South Eastern R. W. Co.*, 4 C. B. N. S. 296; *Pym* v. *Great Northern R. W. Co.*, 2 B. & S. 759; 4 B. & S. 396; *Secord* v. *Great Western R. W. Co.*, 15 U. C. Q. B. 631; *Morley* v. *Great Western R. W. Co*, 16 U. C. Q. B. 504; *Pennsylvania R. W. Co.* v. *McCloskey*, 23 Pa. St. 526; *Quin* v. *Moore*, 15 N. Y. 432; *Lucas* v. *New York*, 21 Barb. (N. Y.) 245; *Rowley* v. *London and N. W. R. W. Co.*, L. R. 8 Ex. 221; *Johnson* v. *Hudson R. R. W. Co.*, 6 Duer. (N. Y.) 634. 648. Under Lord Campbell's Act the rule is that there must have been a reasonable expectation of pecuniary advantage to the relation from the life of the deceased. *Hetherington* v. *North Eastern R. W. Co.*, 9 Q. B. D. 160. The corporation cannot claim to have deducted the amount of an accident policy. *Harding* v. *Townshend*, 43 Vt. 536; 5 Am. 304; *Althorf* v. *Wolfe*, 2 Hilt. (N. Y.) 344, affirmed 22 N. Y. 365; see also *Yates* v. *Whyte*, 4 Bing. N. C. 272; *Hunter* v. *King*, 4 B. & Al. 209; *Bradburn* v. *Great Western R. W. Co.*, L. R. 10 Ex. 1; *Beckett* v. *Grand Trunk R. W. Co.*, 13 A. R. 174, and is without remedy against the party who caused the obstruction, unless the remedy be given by statute. *Vespra* v. *Cook*, 26 U. C. C. P. 182. In several of the New England States a recovery over is given by statute. See *Lowell* v. *Short*, 4 Cush. (Mass.) 275; *Milford* v. *Holbrook*, 9 Allen (Mass.) 17; *Lowell* v. *Boston and Lowell R. W. Co.*, 23 Pick. (Mass.) 24; *Winship* v. *Enfield*, 42 N. H. 197; *Hocksett* v. *Amoskeag Co.*, 44 N. H. 105; *Monmouth* v. *Gardiner*, 35 Me. 247; *Patterson* v. *Colebrook*, 9 Foster N. H. 94; *Veazie* v. *Penobscot R. W. Co.*, 49 Me. 119. Where an action is brought against a corporation in respect of an obstruction, &c., caused by some party other than the corporation sued, a remedy over is given to such corporation. See sub-s. 4 of this section. The section is inapplicable where the cause of the injury was gravel simply placed on the road by the defendants, *Rowe* v. *Leeds and Grenville*, 13 U. C. C. P. 515; but it is different where in the course of repairing a highway a hole is left without a light or other adequate protection. *Pearson* v. *York*, 41 U. C. Q. B. 378. The section is applicable only to actions arising out of non-repair of, or neglect to repair highways, &c. *Sullivan* v. *Barrie*, 45 U. C. Q. B. 12. Where the section is applicable, no additional time is given to a legal representative to bring the action, owing to the death of the

or highway laid out by any private person, and the corporation shall not be liable to keep in repair any such last mentioned road, street, bridge or highway, until established by by-law of the corporation, or otherwise assumed for public user by such corporation. (*t*) 46 V. c. 18, s. 531.

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intestate, by reason of negligence within the meaning of the section. *Turner* v. *Brantford*, 13 U. C. C. P. 109. The plaintiff brought an action against two townships for non-repair of a road, and while it was pending before the Court of Appeal, there being some doubt as to his right to recover against the townships, he, as a matter of precaution, issued a writ against the county. A notice to proceed to trial having been served on the plaintiff, the time for trial was enlarged till after the decision of the Court of Appeal. *McHardy* v. *Perth*, 7 P. R. 101. The statute begins to run from the occurrence of the accident, not from the death. *Miller* v. *North Fredericksburg*, 25 U. C. Q. B. 31.

(*t*) This proviso does not apply to roads laid out by the Government, and afterwards abandoned to the municipalities. *Irwin* v. *Bradford*, 22 U. C. C. P. 18. All the Legislature meant by it is, that the mere laying out of a road or building of a bridge by private owners shall not cast a criminal and civil responsibility on the municipality, or on the public represented by them. See *Green* v. *Town of Bridge Creek*, 20 Am. 18. "It is very easy to imagine cases where such a provision should most properly apply, especially in a country where such large open spaces are included in town and city limits—in some cases containing tracts of land in their original state. A landholder might, merely for his personal convenience, stake out half-a-mile of road through his land, cleared or uncleared, and declare that he dedicated it to the public. Such a proceeding, by itself, should not render the municipality liable. But after this is done, and for a long series of years, the public (*alias* the municipality) use the road as a frequented thoroughfare; houses are built along it, as their chief if not their only way of egress and ingress, and which houses are forthwith taxed by the municipality: repairs are regularly done to it every year by the road officers out of public moneys;—it would then, I think, be an unparalleled state of the law if it lie in the mouth of the municipality to declare that they are under no responsibility." *Per* Hagarty, C. J., in *Reg.* v. *Yorkville*, 22 U. C. C. P. 431, 439. The adoption of a road by the parish is no more than the use of it by the public. *Rex* v. *Leake*, 5 B. & Ad. 484. A road dedicated to and used by the public, becomes a highway which the parish must repair, although neither the dedication nor the user has been adopted or acquiesced in by the parish. *Ib.*, 469; see also *Rex* v. *Lyon*, 5 D. & R. 497; *Reg.* v. *Newbold*, 19 L. T. N. S. 656; *Foreman* v. *Canterbury*, L. R. 6 Q. B. 214. If a municipal corporation have created a street as a public street, taking charge of it and regulating it as other streets in the municipality, they cannot be allowed when sued for an injury arising out of their negligence to repudiate their liability. *Mayor, &c.*, v. *Sheffield*, 4 Wall. (U.S.) 189; see also *Irwin* v. *Bradford*, 22 U. C. C. P. 18, 421. Work done by proper authority on roads used as highways, when no evidence of their establishment under statute nor other evidence of

Repair of crossings, etc., made by leave of municipality on toll roads.

(3) The corporation shall, in the absence of an agreement to the contrary, keep in repair all crossings, sewers, culverts and approaches, grades, sidewalks and other works made or done by the council of any municipality, or by any person with the permission of the said council, upon any toll road in or through the said municipality, and on default so to keep in repair shall be responsible for all damages sustained by any person by reason of such default, but the action must be brought within three months after the damages have been sustained (*tt*). 47 V. c. 32, s. 17 ; 48 V. c. 39, s. 21.

Remedy in case of damages for injury caused by parties, other than the corporation sued.

(4) In case an action is brought against a municipal corporation to recover damages sustained by reason of any obstruction, excavation or opening in a public highway, street or bridge placed, made, left or maintained by another corporation or by any person other than a servant or agent of the municipal corporation, the last mentioned corporation shall have a remedy over against the other corporation or person for and may enforce payment accordingly of the damages and costs, if any, which the plaintiff in the action may recover against the municipal corporation ; provided nevertheless

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acceptance is shewn, has repeatedly, in the United States, been held sufficient to authorize the inference of acceptance by the constituted public authorities. *Marcy* v. *Taylor*, 19 Ill. 634 ; *Folsom* v. *Underhill*, 36 Vt. 580 ; *State* v. *Atherton*, 16 N. H. 203 ; *People* v. *Jones*, 6 Mich. 176 ; *Alvord* v. *Ashley*, 17 Ill. 363 ; *Commonwealth* v. *Belding*, 13 Metc. (Mass.) 10 ; *Guthrie* v. *New Haven*, 31 Conn. 308. Though the rule is not uniformly recognized in the United States, it is believed that the weight and prevailing current of authorities support it. *Curtiss* v. *Hoyt*, 19 Conn. 154, 168 ; *Baker* v. *Clark*, 4 N. H. 380 ; *State* v. *Nudd*, 3 Fost. (N. H.) 327 ; *Cole* v. *Sprowle*, 35 Me. 161 ; *People* v. *Beaubien*, 2 Doug. (Mich.) 256, 286 ; *State* v. *Catlin*, 3 Vt. 530 ; *Boyer* v. *State*, 16 Ind. 451 ; *Morse* v. *Ranno*, 32 Vt. 600 ; *Holdane* v. *Coldsprings*, 21 N. Y. 474 ; *Gwynne* v. *Homan*, 15 Ind. 201 ; *Leech* v. *Waugh*, 24 Ill. 228 ; *Connehan* v. *Ford*, 9 Wis. 216 ; *Daniels* v. *People*, 21 Ill. 439 ; *Jennings* v. *Tisbury*, 5 Gray (Mass.) 73 ; *Russell* v. *New York Central R. W. Co.*, 26 Barb. (N.Y.) 430 ; *Hays* v. *State*, 8 Ind. 425 ; *State* v. *Hill*, 10 Ind. 219 ; *Smith* v. *State*, 3 Zabr. (N. J.) 130 ; *State* v. *Sartor*, 2 Stro. (S. Car.) 60 ; *State* v. *Atherton*, 16 N. H. 202. It is doubtless within the power of municipal councils to close up or by proper action refuse to accept highways established by dedication : so that it is impossible for land owners to force upon the public, roads not necessary for public convenience. Such as are necessary the public ought to repair. *Per* Beck, J., in *Manderschid* v. *Dubuque*, 29 Iowa 73 ; 4 Am. 196.

(*tt*) See *Miller* v. *North Fredericksburg*, 26 U. C. Q. B. 31. As to the power to make crossings and side walks on toll roads. See Rev. Stat. c. 159, ss. 154, 155.

that the municipal corporation shall only be entitled to the said remedy over if the other corporation or person shall be or be made a party to the action and if it shall be established in the action as against the other corporation or person that the damages were sustained by reason of an obstruction, excavation or opening as aforesaid placed, made, left or maintained by the other corporation or person; and the municipal corporation may in such action have the other corporation or person added as a party defendant or third party for the purposes hereof if the same is not already a defendant in the action jointly with the municipal corporation and the other corporation or person may defend such action as well against the plaintiff's claim as against the claim of the municipal corporation to a remedy over; and the Court or Judge upon the trial of the action may order costs to be paid by or to any of the parties thereto or in respect of any claim set up therein as in other cases. 50 V. c. 29, s. 33.

County Roads and Bridges.

Jurisdiction of county councils over roads and bridges.

532. The county council shall have exclusive jurisdiction (*u*) over all roads and bridges lying within any town-

(*u*) It is by section 525 enacted that *the soil and freehold* of every highway or road, altered, amended or laid out according to law should be vested in Her Majesty, her heirs and successors. It is by section 527 enacted that *every public road, street, bridge, or other highway* (not saying soil or freehold) in a city, township, town, or incorporated village, shall be vested in the municipality, *subject to any rights in the soil* which the individuals who laid out such road, street, bridge, or highway reserved. It is by this section enacted that the county council shall have *exclusive jurisdiction* over the roads and bridges mentioned, which may include roads and bridges such as mentioned in sections 525 and 527. An endeavour was made, in note *g* to section 525, to reconcile sections 525 and 527, it is now necessary to reconcile this section with those sections.

The present section, it will be observed, omits all reference to "the soil and freehold," as provided for in sections 525 and 527, and omits the use of the word "vest," as used in the latter section. It simply declares that as to the roads and bridges intended, the county council (not corporation) shall have *exclusive jurisdiction*. The reason which probably led the Legislature to confer the exclusive jurisdiction upon counties over county roads and bridges, without vesting the soil or property of them in the counties, was, that the county has no peculiar or exclusive locality constituting the county apart from the separate municipalities which compose it; and it might seem inconsistent, after vesting every public road, street, bridge, or other highway, in a city, township, town, or incorporated village, in the Crown or in the particular local municipality, to vest any of the same highways in the corporation of the county, and therefore "the

ship, town or village in the county, and which the council by by-law assumes with the assent of such township, town or village municipality as a county road, or bridge, until the by-law has been repealed by the council, and over all bridges across streams or ponds or lakes separating two townships in the county, and over all bridges crossing streams or rivers over 100 feet in width, within the limits of any incorporated village in the county, and connecting any main highway leading through the county, and over all bridges over rivers or ponds or lakes forming or crossing boundary lines between two municipalities. (*v*) 46 V. c. 18, s. 532; 50 V. c. 29, s. 34; 51 V. c. 28, s. 30.

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exclusive jurisdiction' was alone conferred upon the county council, as the grant of a power sufficiently large for all practical purposes, and indicating that the local municipality or municipalities are to be excluded from all interference in the exercise of that power. *Per* Adam Wilson, J., in *Wellington* v. *Wilson*, 16 U. C. C. P. 130. That every public road in a township is vested in the municipality thereof, must be taken with some limitation; for the county council has, under this section, exclusive jurisdiction over all roads, &c., lying within any town or village of the county which the county council, with the assent of such town or village municipality, assumes as a county road. See *Per* John Wilson, J., in *Reg.* v. *Louth*, 13 U. C. C. P. 615-618. This section, before amendment, applied only to roads or bridges within townships. *Per* Burns, J., in *St. George's Church* v. *Grey*, 21 U. C. Q. B. 265. It will be observed that the powers of county county councils are now much extended.

(*v*) The first subjects in the section it is quite plain must be assumed by the county by by-law. The remaining three subjects are not within that part of the section to which the word "by-law" refers, *per* Wilson, J., in *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 82. The section does not in terms require that the last three subjects shall be assumed by by-law. The section reads better by itself that the county council shall have exclusive jurisdiction over these three subjects . . . It is the positive duty of the county to perform the necessary acts with respect to subjects two and three although the county council has passed no by-law assuming such subjects because the county council has exclusive jurisdiction over them, *Ib.* 83. The section must be read as modified by sections 538 and 556, and as meaning that every road dividing different townships shall, when assumed by the county council, be within the exclusive jurisdiction of the county, *Ib.*, 84; see further, *Reg.* v. *Wellington*, 39 U. C. Q. B. 194. The case of *Re McBride and York*, 31 U. C. Q. B. 355, so far as it expresses that roads between townships are without having been assumed by the county within the sole control of the county must be modified. See *per* Wilson, J., in *O'Connor* v. *Otonabee*, 35 U. C. Q. B. 85. The section was held in *Reg.* v. *Perth*, C. P. M. T. 1872, (not reported), to be inapplicable to roads between townships acquired by the county council by purchase, but this decision which was followed in *Hacking* v. *Perth*, 35 U. C. Q. B. 400, was

Boundary lines may be maintained by county.

533. Any county council may assume, make and maintain any township or county boundary line at the expense of the county, or may grant such sum or sums from time to time for the said purposes as they may deem expedient. (*w*) 46 V. c. 18, s. 533.

Improving and Maintaining County Roads.

Roads or bridges assumed by county councils.

534. When a county council assumes, by by-law, any road or bridge within a township as a county road or bridge, the council shall, with as little delay as reasonably may be, and at the expense of the county, cause the road to be planked, gravelled or macadamized, or the bridge to be built in a good and substantial manner; (*x*) and further, the

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disapproved of in *S. C.* 35 U. C. Q. B. 467, by the Court of Appeal. As to the power of a county to divest itself of a road which it has assumed. See *Reg.* v. *Perth*, 6 O. R. 195.

(*w*) By township boundary line, here mentioned, is intended a road which forms the boundary line of a township or boundary line between townships, and a road may also be a boundary line of a county or a boundary line between counties. In either event the county council may do one of two things—assume, make and maintain it, or grant money from time to time for the purpose of making or maintaining it.

(*x*) Power is often conferred on municipal councils without the imposition of a duty, in which case the exercise of the power is discretionary. See *In re Weston Grammar School*, 13 U. C. C. P. 423; *Bell* v. *Crane*, L. R. 8 Q. B. 481; *Hovey* v. *Mayor*, 43 Me. 322; *Benjamin* v. *Wheeler*, 8 Gray (Mass.) 413. But here the power is subordinate to the imposition of duty, viz., the council *shall*, with as little delay as possible, &c. See note *b* to sub-s. 30 of sec. 496. "It would seem to be reasonable, when a county council assumes by by-law, the exclusive jurisdiction over any road or bridge lying entirely within a township as a county road or bridge, that the council should be compelled to improve and sustain it at the expense of the county, which is just the very direction the statute makes, otherwise there can be no sense or purpose in the township being divested of the jurisdiction over its own internal roads. *Per* Wilson, J., in *Rose and Stormont*, 22 U. C. Q. B. 531, 536. The county cannot, in the absence of express legislation, cast the obligation of repairing a road or bridge so assumed on the local municipalities. *Ib.* 537. "To cast the burden upon the special locality, and to make it provide for the whole general advantage, where it has no power or jurisdiction, and its only privilege is to pay under the dictation of another power, would be as onerous and unreasonable an obligation as can well be conceived." *Per* Wilson, J., *Ib.* Nor has the county, in the absence of express legislation, any power to cast upon the local municipalities the obligation to keep in repair a town-

Maintenance of certain bridges in villages.

county council shall cause to be built and maintained in like manner, all bridges on any river or stream over 100 feet in width, within the limits of any incorporated village in the county, necessary to connect any main public highway leading through the county. (*y*) 46 V. c. 18, s. 534; 50 V. c. 29, s. 35.

Bridges between municipalities.

535—(1) It shall be the duty of county councils to erect and maintain bridges over rivers, forming or crossing boundary lines between two municipalities (other than in the case of a city or separated town) within the county; (*z*) and in case

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ship road purchased by the county. *Reg.* v. *Louth*, 13 U. C. C. P. 615; but see sub-s. 6 of s. 566.

(*y*) The latter part of this section was an addition made to s. 342 of 29 & 30 Vict. c. 51. It was added by 34 Vict. c. 30, s. 8. Before the addition, the county council could only assume as county roads such roads or bridges as were within townships and were under no obligation to keep in repair any bridge within an incorporated village. Where such a bridge is across a river over 100 feet in width, and is necessary to connect the parts of any public highway leading through the county, the obligation to build and maintain it is cast absolutely on the county, and very properly so, for a bridge so situated is really a part of the county road, which by statute is within the exclusive jurisdiction of the county; see further sec. 535, and notes thereto.

(*z*) A bridge is defined as being any structure of wood, stone, brick or iron, raised over a river, pond, or lake for the passage of men and animals. See *Reg.* v. *Derbyshire*, 2 Q. B. 745; *State* v. *Gorham*, 37 Me. 451; *Sussex* v. *Strader*, 3 Harris (N. J.) 108. The word "bridge," may include such abutments as are necessary to make the structure accessible and useful. *Rex* v. *West Riding of York*, 7 East 596; *Bardwell* v. *Jamaica*, 15 Vt. 438; *Tolland* v. *Wellington*, 26 Conn. 578; *Commonwealth* v. *Deerfield*, 6 Allen (Mass.) 449. A bridge is said to be a mere substitute for a ferry. *Per* Savage, C. J., in *People* v. *Saratoga and Rensselaer R. W. Co.*, 15 Wend. (N. Y.) 133. The duty of repairing bridges in England, in the absence of legislation to the contrary, rested on the county, 2 Inst. 700, 701; *Rex.* v. *West Riding of Yorkshire*, 2 East 342, 356; *Hill* v. *Livingston*, 12 N. Y. 52; *Follett* v. *People*, *Ib.* 273; *People* v. *Cooper*, 6 Hill (N. Y.) 516; and at common law it was indispensable to the legal character of the bridge repairable by the county, that it should be shown to cross a stream or watercourse. *Rex* v. *Oxfordshire*, 1 B. & Ad. 289; *Rex* v. *Salop*, 13 East. 95; *Rex* v. *Lindsey*, 14 East. 317; *Rex* v. *Northampton*, 2 M. & S. 262; but these words were held to cover water flowing in a channel between banks more or less defined, even though the channel were occasionally dry. *Rex* v. *Marquis of Buckingham*, 4 Camp. 189; *Rex* v. *Oxfordshire*, 1 B. & Ad. 289; see also *Rex* v. *Tafford*, *Ib.* 874; *Rex* v. *Whitney*, 3 A. & E. 69; *Rex* v. *West Riding of Yorkshire*, 2 East. 342; *Rex* v. *Northampton*, 2 M. & S. 262; *Rex* v. *Marquis of Buckingham*, 4 Camp. 189; *Rex* v. *Devon*, Ry. & M. 144; *Rex* v. *Derbyshire*, 2 Q. B. 745, 756.

of a bridge over a river forming or crossing a boundary line

Whether the particular structure is a bridge or not, if there be reasonable evidence as to it, is a question for the jury. *Reg.* v. *Gloucestershire*, 1 C. & M. 506; *Tolland* v. *Wellington*, 26 Conn. 578. The common law responsibility of counties to repair bridges has never prevailed in the United States. *Hedges* v. *Madison*, 1 Gilm. (Ill.) 567; *Hill* v. *Livingston*, 12 N. Y. 52; *Huffman* v. *San Joaquin*, 21 Cal. 426. The common law obligation seems to prevail in Ontario, with this qualification, that it is cast upon the local municipality or the county according to the nature of the structure, position of the bridge, and other surrounding circumstances. *Harold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9; *Reg.* v. *Yorkville*, 22 U. C. C. P. 431. But see *Wallis* v. *Municipality of Assiniboia*, 4 Manitoba 89. It is by this section expressly declared to be the duty of county councils to erect and maintain bridges over rivers *forming* or *crossing* boundary lines between two municipalities in the county excepting the case of a city or separated town. See *Reg.* v. *Carleton*, 1 O. R. 277; *In re Townships of Moulton and Canborough, and the County of Haldimand*, 12 A. R. 503.

The Legislature has not given any definition as to the meaning of the word "river," The Legislature in some of the sections of the Municipal Act uses the word "stream," in others, "water-course," in others, "river," and in others, "creek." See ss. 532, 534, 535, and 569. The words "stream" and "water-course," may be looked upon as synonymous, but certainly not the words "river" and "creek." Every stream may be said to be a water-course, and every water-course may be said to be a stream of water; but every river cannot with propriety be said to be a creek, or every creek a river. The stream crossing the public road between the townships of Ellice and Downie at Sebringville, which is from thirty to forty feet in width with clearly defined banks, and which the people there call "Black Creek," has been held to be a river, within the meaning of this section. *McHardy* v. *Ellice*, 1 A. R. 628; reversing 37 U. C. Q. B. 580. But even where the stream is beyond controversy a river, the county council must have some discretion as to the place where the bridge should be erected, and must be allowed to some extent to judge of the necessity of the erection. *Kinnear* v. *Haldimand*, 30 U. C. Q. B. 398; *Re Wescott and Peterborough*, 33 U. C. Q. B. 280; *Reg.* v. *Haldimand*, 38 U. C. Q. B. 396; See *Hislop* v. *McGillivray*, 12 O. R. p. 774; *In re Brooks and Haldimand*, 3 A. R. 73, reversing *S. C.*, 41 U. C. Q. B. 381. The leading road through the county of Wellington running north and south, crosses the Grand River in the village of Fergus, by the Tower street bridge, less than 100 feet in width, which was built in 1834, and by that bridge only till 1850, when another bridge more than 100 feet wide, was built by a private owner of property in the village, over the river at St. David street, about 300 yards from Tower street. The county never by by-law assumed either bridge, but had granted aid in keeping up both. Held, that the county could not be compelled to maintain the St. David street bridge. *Reg.* v. *Wellington*, 39 U. C. Q. B. 194. Indictment would appear to be the proper remedy in all cases where a municipality is charged with the non-repair of an existing road or bridge. *Reg.* v. *Commissioners of Llandilo Roads*, 2 T. R. 232;

between two or more counties, or a county, city or separated town, such bridge shall be erected and maintained by the councils of the counties or county, city and separated town respectively; (*a*) and in case the councils fail to agree as to the respective portions of the expense to be borne by the municipalities interested, it shall be the duty of each to appoint arbitrators, as provided by this Act, (*b*) to determine the proportionate amount to be paid by each, and the award made shall be final. (*c*)

(2) A road which lies wholly or partly between two municipalities shall be regarded as a boundary line within the meaning of this section, although such road may deviate so that it is in some place or places wholly within one of the municipalities, and a bridge built over a river crossing such

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Reg. v. *Oxford and Whitney Turnpike Roads*, 12 A. & E. 427; *Reg.* v. *Haldimand*, 20 U. C. Q. B. 574; *Reg.* v. *Brown and Street*, 13 U. C. C. P. 356; *Reg.* v. *Township of McGillivray*, 38 U. C. Q. B. 91; *Re Jameson and the County of Lanark*, *Ib.* 647. A person sustaining special injury, owing to the defective state of a bridge may sue the municipality on whom rests the duty to repair. *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9; *Richardson* v. *Royalton and Woodstock Turnpike Co.*, 6 Vt. 496; *Gregory* v. *Adams*, 14 Gray (Mass.) 242; *Dugan* v. *Bridge Co.*, 27 Pa. St. 303; *Patterson* v. *East Bridge in Belfast*, 40 Me. 404. A bridge may be so constructed over a navigable river, in the absence of legislative authority, as to be a public nuisance. *Reg.* v. *West Riding of Yorkshire*, 2 East. 342; *Ex parte Jennings*, 6 Conn. 518; *Arundel* v. *McCulloch*, 10 Mass. 70; *Lansing* v. *Smith*, 4 Wend. (N.Y.) 65; *Thomas* v. *Leland*, 24 Wend. (N. Y.) 65; *Philadelphia* v. *Field*, 58 Pa. St. 320. But because it may be a nuisance to those navigating the river, it does not follow that those who do not navigate it can complain. *Fort Plain Bridge Co.* v. *Smith*, 30 N. Y. 44. A proviso in a charter to erect a bridge over a navigable river, in such a manner as not to injure, stop, or interrupt the the navigation, is a limitation of the franchise only, but not of the liability to persons injured when navigating. *Monongahela Bridge Co.* v. *Kirk*, 46 Pa. St. 112. Such a bridge must, if necessary, be altered to accommodate increased travel. *Manly* v. *St. Helen's Canal and R. W. Co.*, 2 H. & N. 840.

(*a*) The obligation to repair applies whether the bridge was originally constructed by a municipality or the Crown. The state of repair in which such a bridge was, when owned by the Crown, is no measure of subsequent liability. So long as the bridge is kept open, it must be kept reasonably safe for the use of the public. *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9; *Reg.* v. *Carleton*, 1 O. R. 277.

(*b*) See sec. 385 *et seq.*

(*c*) See notes to sec. 65 of the Assessment Act.

road where it deviates as aforesaid shall be held to be a bridge over a river crossing a boundary line within the meaning of this section. 48 V. c. 39, s. 22.

(3) Where a river or stream forms a boundary line between two or more municipalities within a county, it shall be the duty of the council of the county to keep such river or stream free from all accumulation of driftwood or fallen timber now or hereafter accumulated; (*d*)

(4) In the case of any river or stream which forms a boundary line between two or more counties, or a county, city, or separated town, it shall be the duty of the councils of the county or counties, city and separated town respectively to keep such river or stream free from all accumulation of drifted or fallen timber now or hereafter accumulated; and in case the councils fail to agree as to the respective portion of the expense to be borne by the municipalities interested the same shall be decided by arbitration under the provisions of this Act, and the award made shall be final; (*e*) 51 V. c. 28, s. 31.

Maintaining Township Roads.

536. All township boundary lines (*f*) not assumed by the county council shall be opened, maintained and improved by the township councils, except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two municipalities. 46 V. c. 18, s. 536. Boundary lines not assumed by county councils.

537. Township boundary lines forming also the county boundary lines, (*g*) and not assumed or maintained by the Township boundaries, being also county boundaries.

(*d*) As to powers of townships with respect to the removal of obstructions in streams, see sec. 521, sub-ss. 16 to 18 and sec. 522.

(*e*) See sec. 385 *et seq.* See also notes to sec. 65 of the Assessment Act.

(*f*) By "township boundary *line*" is probably meant a road forming a township boundary. The object of the section is to relieve counties from the burden of keeping roads in repair, and throw that burden upon the local municipalities adjacent thereto. To cast the burden upon a particular locality of keeping in repair a county road, used by the whole county, seems unfair. See remarks of Adam Wilson, J., in *Rose and Stormont*, 22 U. C. Q. B. 537; see further, note *z* to sec. 535, but such is apparently the policy of this section.

(*g*) Roads forming township boundary lines, when *not* assumed by

respective counties interested, shall be maintained by the respective townships, bordering on the same, except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two municipalities. 46 V. c. 18, s. 537.

Roads Under Joint Jurisdiction.

Joint jurisdiction over certain roads.

538. In case a road lies wholly or partly between a county, city, town, township, or incorporated village, and an adjoining county or counties, city, town, township or incorporated village, (*h*) the councils of the municipalities be-

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the county council, are to be opened, maintained and improved by the township councils; but when forming county boundary lines they are, unless assumed by the counties, to be under this section, maintained "by the respective townships bordering on the same," except where it is necessary to erect or maintain bridges over rivers forming or crossing boundary lines between two municipalities. A different policy prevails as to bridges over rivers, ponds or lakes forming or crossing boundary lines between two municipalities. See sec. 532.

(*h*) In case a road lies *wholly or partly between* a county, &c., and an adjoining county, &c. A road situate wholly *within* a city, town, township, or incorporated village, is vested in the local municipality. Sec. 527. "When, therefore, the defendants assert that the road in question is a county road, properly constitnted as such under the provisions of the statute, they are asserting that to be the case which we see *could not be.*" *Per* Burns, J., in *St. George's Church* v. *Grey*, 21 U. C. Q. B. 265, 268. When is a road to be said to lie wholly *between* a county, &c., and an adjoining county, &c.? Does the word "between" mean that the road separates the two municipalities, so that a traveller might go along it being in neither one municipality nor the other? Such was the interpretation given to the 39th section of 12 Vict. c. 81, in *Woods* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101. And such appears to be the interpretation of this section *Per* Draper, C. J., in *Harrold* v. *Simcoe and Peel*, 18 U. C. C. P. 10. "When you speak of something lying between two other places or things, you mean, in the accurate use of language, something lying between the boundaries or limits of the other two places or things—something dividing them, within the borders of that which does divide them, you do not in such a case employ the word, 'between' as meaning something common to two parties or places, as when you speak in common ordinary terms of a well or a stable as in use between two parties, or common to both," &c. *Per* VanKoughnet, C., *Ib.* 15. When is a road said to be *partly* between two municipalities? This question can be best answered by a decided case. A road had for more than fifty years been used as a road between the townships of York and Vaughan, the original allowance for road being to the north of it, and this road being in fact wholly within the township of York, and part of lot 25. The owner of the lot had been indicted for closing up this road and convicted in 1870. The corporation of the township of York then passed a by-law to

tween which the road lies shall have joint jurisdiction over the same, (*i*) although the road may so deviate as in some places to be wholly or in part within one or either of them; (*j*) and the said road shall not include a bridge over a river forming or crossing the boundary line between two municipalities, other than counties. (*k*) 46 V. c. 18, s. 538.

Both councils must concur in by-laws respecting them.

539. No by-law of the council of any one of such municipalities with respect to such last mentioned road or bridge, (*l*) shall have any force until a by-law has been

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close it, reciting that there was no further necessity for it by reason of the road allowance. Held, that the road was one dividing the townships, and though in fact wholly within the township of York, could not be legally closed by the council of that township. *In re McBride and York*, 31 U. C. Q. B. 355. The section applies where the deviation has been made to obtain a good line of road—not in order to suit the convenience of either municipality. *Per* Robinson, C. J., *In re Brant and Waterloo*, 19 U. C. Q. B. 450.

(*i*) It is doubtful if the words used in this section, conferring joint jurisdiction, standing by themselves, mean anything more than that the municipalities jointly interested are to concur in any regulation necessary to be applied to the road or bridge in regard to tolls or otherwise. *In re Brant and Waterloo*, 19 U. C. Q. B. 450; see further note *u* to sec. 532. But the words "duty and liabilities," used in sec. 540, may be held to give a more extended meaning to them. If they mean more, so as to render the corporation liable for neglect to repair, the obligation must be proved as laid. *Wood* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101. That the words do mean more would appear to follow from the decision in *Harrold* v. *York and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9, if that case be taken as determining the liabilities, under the statute, of the corporation there sued.

(*j*) See note *h* to this section.

(*k*) Much difficulty was created owing to the language used in the section as formerly framed, 29 & 30 Vict. c. 51, s. 329. It was held, when the words used were "In case a road or bridge lies." &c., that each was a nominative case, and that the Act did not apply to the case of a bridge *forming part* of a road. *In re Brant and Waterloo*, 19 U. C. Q. B. 450; see difference of opinion on the point in *Harrold* v. *Simcoe and Ontario*, 18 U. C. C. P. 10, 17. The original Act was in this respect first amended by 33 Vict. c. 26, ss. 1, 8, by striking out the words "or bridge." See *Beaver* v. *Manchester*, 26 L. J. Q. B. 311. If the road were held to embrace a bridge forming part of the road, the liability to repair the bridge must be the same as the liability to keep the road in repair. See *McHardy* v. *Ellice*, 37 U. C. Q. B. 580; 1 A. R. 628.

(*l*) That is a road lying wholly or partly between a county, town, city, township, or incorporated village, and an adjoining county, &c., or a bridge forming part of a road. See notes *h* and *k* to sec. 538.

passed in similar terms, as nearly as may be, by the other council or councils having joint jurisdiction in the premises. (*m*) 46 V. c. 18, s. 539.

Arbitration if they do not concur.

540. In case the other council or councils, for six months after notice of the by-law, (*n*) omit to pass a by-law or by-laws in similar terms, the duty and liabilities of each municipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act. (*o*) 46 V. c. 18, s. 540.

Transfer of Former Powers of Justices in Sessions to County Councils.

Certain powers of justices in sessions transferred to county councils.

541. All powers, duties, and liabilities which at any time before the 1st day of January, 1850, belonged to the magistrates in Quarter Sessions with respect to any particular road or bridge in a county, and are not conferred or imposed upon any other municipal corporation, shall belong to the council of the county, or in case the road or bridge lies in two or more counties, to the councils of such counties; (*p*) and the neglect and disobedience of any regulations or directions made by such council or councils shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations of the magistrates would have subjected them to. 46 V. c. 18, s. 541.

(*m*) "Joint jurisdiction." See note *i* to sec. 538.

(*n*) It would be well for the municipal council first passing the by-law and requiring the other municipal council to do so, to serve the latter with a copy of the by-law. That would be the best notice of the same. Six months are allowed to the council of the latter municipality within which to pass a by-law in similar terms.

(*o*) Whether or not the arbitrators have power in respect to a bridge, to direct when and at what cost the bridge shall be built, and to compel the respective municipalities to contribute, is doubtful. *In re Brant and Waterloo*, 19 U. C. Q. B. 450.

(*p*) This section is not to be understood as limiting the responsibility of counties to just the same measure of responsibility to which magistrates in Quarter Sessions were subjected. This is not the purpose of the clause. It is a transfer clause or clause of conveyance from the magistrates to the county councils of all the powers, &c.; and on the completion of such transfer the councils are to hold the property operated upon in like manner and subject to the general duties and liabilities applicable to their other property. The section, it will also be seen, applies only to such particular roads and bridges as were not conferred or imposed on any other municipal council; but it is difficult to say what roads or bridges can be within it, when

Roads vested in Her Majesty.

Roads, etc., provincial works vested in Her Majesty, etc., not to be interfered with.

Proclamation by Lieut.-Gov. as to roads, etc., under control of Commissioner of Public Works.

542. No council shall interfere with any public road or bridge vested as a provincial work in Her Majesty, (*q*) or in any public department or board and the Lieutenant-Governor shall by Order in Council have the same powers as to such road and bridge as are by this Act conferred on municipal councils with respect to other roads and bridges; (*r*) but the Lieutenant-Governor may by proclamation declare any public road or bridge under the control of the Commissioner of Public Works, to be no longer under his control (*s*) and in that case, after a day named in the proclamation, the road or bridge shall cease to be under the control of the Commissioner, and no tolls shall be thereafter levied thereon by him, and the road or bridge shall thenceforth be controlled and kept in repair by the council of the municipality. (*t*) 46 V. c. 18, s. 542.

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sections 526, 527, and 532 have already conferred or imposed every road and bridge upon some municipality, excepting those Government works specially exempted under section 542. The section under consideration was, it is presumed, inserted *ex abundanti cautela*, and not because there was any case or special property upon which it can really operate. *Per* Adam Wilson, J., in *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 5[illegible], 51.

(*q*) All public roads, with few exceptions, are vested in the municipality in which situate. Sec. 527. Among the exceptions may be classed roads coming under the operation of this section, viz., public roads, &c., vested as Provincial works in Her Majesty, or in any public department or board, such as the Department of Public Works.

(*r*) There is a difference between a power and an obligation. See note *x* to sec. 534. The corporation in which a public road is vested is not only empowered to keep it in repair, but is bound to do so. Sec. 531. The power, without the obligation, is here conferred upon the Governor in Council.

(*s*) Such a proclamation was presumed, in an action to recover damages for non-repair, where the local municipality was shewn to have used the road as a road vested in them. *Irwin* v. *Bradford*, 22 U. C. C. P. 18, 421. See also *Knight* v. *Medora and Wood*, 11 O. R. 138; 14 A. R. 112.

(*t*) Suppose the public way to be a bridge, and that bridge crossing a stream which is a boundary line between two counties, but not in either of them, on whom devolves the obligation to keep such a bridge in repair after it ceases to be under the control of the Commissioner of Public Works? In *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; 18 U. C. C. P. 9, the obligation was held to rest on the corporations of the two counties. "I think that looking at the

Roads on Dominion Lands.

543. No council shall pass a by-law (*u*)

Ordnance roads, lands, etc.

1. For stopping up or altering the direction or alignment of any street, lane or throughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State in whom the Ordnance Estates became vested under the Statute of the Province of Canada passed in the 19th year of Her Majesty's reign, chapter 45, or the Consolidated Statute of Canada, chapter 24, respecting the Ordnance and Admiralty lands, or by the Dominion of Canada; (*v*) or

19 V. c. 45, Con. Stat. Can. c. 24. *See* R. S. C. c. 55.

Dominion lands,

2. For opening any such communication through any lands held by the Dominion of Canada; (*w*) or

Bridges, etc.

3. Interfering with any bridge, wharf, dock, quay, or other work vested in the Dominion of Canada; or

Military lands,

4. Interfering with any land reserved for military purposes, or with the integrity of the public defences,—

Not to be interfered with without consent of Dominion.

without the consent of the Government of the Dominion of Canada; and a by-law for any of the purposes aforesaid

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question before us, we may properly give to the word 'between,' the popular rather than the more limited, though possibly more rigidly correct sense; and that when a bridge is constructed over navigable waters, and connects two opposite shores lying in different counties, we should hold such bridges to be between such two counties and that they are jointly answerable for its maintenance, even though the counties, as respectively containing the townships between the shores of which the current flows, reach to the middle of the water, and are divided only by the invisible untraceable line called *medium filum aquæ*." *Per* Draper, C.J., in *Harrold* v. *Simcoe and Ontario*. 18 U. C. C. P. 13.

(*u*) The power to legislate as to municipal institutions in the Province is by the B. N. A. Act, sec. 92, sub-s. 8, vested in the Legislature of each Province. But whether a public work be vested in Her Majesty as representing the Province, or the Dominion, see *Attorney-General* v. *Harris*, 33 U. C. Q. B. 94, it is equally beyond the power of a local municipal Act to interfere with or control it without the consent of the Queen. The previous section makes this the law in reference to Provincial works, vested in Her Majesty. This has reference to Dominion works and Dominion property.

(*v*) The object of this part of the section is to protect roads, &c., laid out through ordnance lands. The ordnance Transfer Act of 1856 divided ordnance lands into two schedules; the first schedule comprising all lands vested in one of Her Majesty's Principal Secretaries of State, and the second such lands as are reinvested in the Crown for the public uses of the Province.

(*w*) See preceding note.

shall be void, unless it recites such consent. 46 V. c. 18, s. 543.

Roads Necessary for Ingress and Egress.

Council not to close road required for ingress, egress, etc.

544.—(1) No council shall close up any public road or highway, whether an original allowance or a road opened by the Quarter Sessions or any municipal council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, (*x*) unless the council, in addition to compensation, also provides for the use of such person some other convenient road or way of access to the said lands or residence. (*y*) 46 V. c. 18, s. 544.

Proviso.

(*x*) The power of a municipal council to close up a highway is subject to certain limitations. One of these, under this section, is against doing so in the case of a road "whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road." "The Legislature says in effect, 'You must not stop up any road whereby any person wil be excluded from ingress or egress to and from his lands or place of residence *over such road.*' If, then, such a road be stopped, most certainly all persons must be excluded from ingress and egress to or from their lands *over that road.* There can be no ingress or egress over a stopped-up road. Therefore, I presume, all persons who come into their lands directly from that road, or pass from their lands directly on to that road, are to be protected. This would leave all persons who merely used the road as *a convenience*, but had no lands abutting thereon, from or to which ingress or egress would be effected, without the protection of the clause." *Per* Hagarty, C. J., in *Moore and Esquesing*, 21 U. C. C. P. 277, 285. The omission in a by-law which closes up a road to provide some other convenient road or way of access does not render it void, but only subject to be quashed upon application to the court within a year. *Vandecar* v. *East Oxford*, 3 A. R. 131. If a council closes up a road, no other way being provided, the by-law may at once be moved against. An applicant affected is not bound to wait until the road is actually closed before coming to the court. *Re Laplante and Peterborough*, 5 O. R. 634. The onus of shewing that another convenient road is open is upon the corporation. *Adams* v. *East Whitby*, 2 O. R. 473. The court will not, on the application of a person who merely used the road as a convenience but had no lands abutting thereon, quash a by-law for alleged contravention of this section. *In re Falle and Tilsonburg*, 23 U. C. C. P. 167. See also *Hewison* v. *Pembroke*, 6 O. R. 170.

(*y*) The effect of the latter part of the section is to permit a council to close up such a road as mentioned in the first part of the section, provided compensation be paid to the persons directly affected, and a substituted road or way of access be provided. *In re Annis and Mariposa*, 25 U. C. C. P. 133; *In re Thurston and Verulam*, *Ib.* 593. This provision applies to cases where the only means, or the only convenient means of access is over the road closed up, and not where

(2) If the compensation offered by the council, to the owner of the lands, nor the road provided for the owner in lieu of the original road, as a means of egress and ingress, is not mutually agreed upon between the council and the owner or owners, (as the case may be), then in such case, the matters in dispute shall be referred to arbitration, under the provisions of this Act respecting arbitration. (*z*) 49 V. c. 37, s. 15.

Width of Roads.

Width of roads.

545. No council shall lay out any road or street more than one hundred nor less than sixty-six feet in width, except where an existing road or street is widened, or unless with the permission of the council of the county in which the municipality is situate; but any road when altered, may be of the same width as formerly, and no highway or street shall be laid out by any owner of land of a less width than sixty-six feet, without the consent of the council of the municipality. (*a*) 46 V. c. 18, s. 545.

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there is another existing though less convenient way of access. *Re McArthur and Southwold*, 3 A. R. 295. It is not a condition precedent, that compensation should be provided for in the by-law closing up the road. *Ib.* See also *Re Vashon and the Corporation of East Hawkesbury*, 30 U. C. C. P. 194. In Indiana it has been held that a municipal corporation cannot close up a street without the consent of the landowners whose land abuts thereon, or compensating them for the damage. See *Haynes* v. *Thomas*, 7 Ind. 38; *Indianapolis* v. *Cross*, *Ib.* 9; *Tate* v. *Ohio and Mississippi R. W. Co.*, *Ib.* 479, 483.

(*z*) See sec. 385 *et seq.*

(*a*) The object of this section is to make all highways at least sixty-six feet, or one chain, in width. A maximum width of one hundred feet is also given. The consent of the county council though a condition precedent to the laying out of the road of a greater or less width than that specified, is not a condition precedent to the passing of the by-law. *Re Ostrom* v. *Sidney*, 15 O. R. 43. A by-law opening a new road should on the face of it shew the width of the road, *In re Smith and Euphemia*, 8 U. C. Q. B. 222, and should, it seems, when it authorizes a road through a man's land, shew where it enters and what course it takes. *Dennis* v. *Hughes*, *Ib.* 444. A by-law to establish a road must on its face shew the boundaries of the road, or refer to some document wherein they are defined. The intention of the framers of the by-law cannot be ascertained by extrinsic evidence. *St. Vincent* v. *Greenfield*, 12 O. R. 297. See also *In re Brown and York*, 8 U. C. Q. B. 596; *McIntyre* v. *Bosanquet*, 11 U. C. Q. B. 460. The same strictness does not of course apply to a by-law closing up an old road. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. Where the road was not sufficiently described, but it appeared that on the ground it was defined by fences on each side, and had been travelled

Notices of By-laws affecting Public Roads.

546. No council shall pass a by-law for stopping up, altering, widening, diverting or selling any original allowance for road (*b*) or for establishing, opening, stopping up, Conditions precedent to passing by-laws intended to affect public roads.

for eight years, the Court refused to quash the by-law. *Hodgson* v. *York, Peel and Ontario*, 13 U. C. Q. B. 268. The public are *prima facie* entitled to the use of the entire width as a highway. See notes to sec. 531.

(*b*) Non-user of a highway is not enough to destroy its character as a highway. *Badgley* v. *Bender*, 3 U. C. Q. B. O. S. 221. *Nash* v. *Glover*, 24 Grant 219. The common law mode of closing a highway was by writ *ad quod damnum*. *Rex.* v. *Ward*, Cro. Car. 266. This both in England and here has fallen into disuse because of less expensive and more convenient procedure enacted by statutes. Statutes authorizing an interference with the rights of the public over highways are strictly construed. *Ib.* The conditions here mentioned are precedent to the validity of the by-law. *In re Nichol and Alnwick*, 41 U. C. Q. B. 577. The declaration as here that no council shall pass a by-law until, &c., enables the council to pass the by-law subject to the conditions imposed. The powers here inferentially conferred are directly conferred by sec. 550, sub-s. 1. It was at one time supposed that a municipal council could not in any case legally close up or vacate a road, except for the purpose and with the view of substituting some other line of road in its place. See *Welch* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfather*, 5 Taunt. 634; *Wright* v. *Frant*, 4 B. & S. 118; *Reg.* v. *Shiles*, 1 Q. B. 919; *Reg.* v. *Phillips*, L. R. 1 Q. B. 648. But the Court, in *Johnston* v. *Reesor*, 10 U. C. Q. B. 101, refused to give effect to such a construction, saying, "Here was a road, first allowed at an early period as a mere accommodation to the immediate neighbours for enabling them to pass through private property by a short road from one concession to another, instead of going round by the nearest public allowance, where the ground might have been wet or unfavourable. It may be very reasonable afterwards, when the township becomes cleared and populous, and roads can be made more easily, to relieve the proprietor of the land from the disadvantage of having a thoroughfare through his property, and to leave only the public allowance." *Ib.* 103-104; see *Reg.* v. *Plunkett*, 21 U. C. Q. B. 536; *Moore and Esquesing*, 21 U. C. C. P. 277. This is supposing the owners of the land abutting thereon to be willing that the road should be so closed. But if the effect of closing the road will be to prevent such owners from ingress and egress to and from their lands or places of residence over the road, the same cannot be closed without compensation to them, and some other road or way of access as a substitute. Sec. 544. Subject to this and other statutory restrictions, the municipal corporation has full power to close up highways within the municipality. See *Gray* v. *Iowa Land Co.*, 26 Iowa 387; *Kimball* v. *Kenosha*, 4 Wis. 321; *Stuber's Road*, 28 Pa. St. 109; *Commissioners* v. *Gas Co.*, 12 Pa. St. 318; *Jersey City* v. *State*, 1 Vroom (N. J.) 521; *Trenton Railroad Case*, 6 Whart. (U. S.) 25; *Bailey* v. *Philadelphia, &c., R. W. Co.*, 4 Harring. (Del.) 389; *Hinchman* v. *Detroit*, 9 Mich. 103. As to

altering, widening, diverting or selling any other public highway, road, street, or lane ; (*c*)

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closing up square, park, &c., see *Attorney-General* v. *Toronto*, 10 Grant 436 ; and as to closing up a highway so as to make it a *cul de sac*, see *Mayor, &c., of Montreal* v. *Drummond*, 1 App. Cas. 384. See also note *f* to sec. 504. It has been held that a municipal corporation, under power "to locate and establish streets and alleys, and *vacate* the same," had power to shut up or vacate streets, and that such a power, when exercised with a due regard to individual rights, is not to be restrained at the instance of property owners claiming that the streets be for ever kept open as dedicated to the public. *Gray* v. *Iowa Land Co.*, 26 Iowa, 387 ; distinguished from *Warren* v. *Lyons*, 22 Iowa 351. If no other disposition were made of the stopped-up road, the soil and freehold would be and become the soil and freehold of the owner of the soil relieved of the easement in favour of the public. *Barclay* v. *Howell's Lessee*, 6 Pet. (U. S.) 498, 513 ; *Harris* v. *Elliott*, 10 Pet. (U. S.) 25. The conveying away the land to another, where the corporation has authority to do so, is a distinct matter altogether, and not necessary to the extinction of the public right of way. *Johnson* v. *Reesor*, 10 U. C. Q. B. 101. Counties have, in certain cases, power to stop up highways and convey the right of way. Sec. 566 ; and townships in certain cases, subject to the confirmation of the county council. Sec. 567, sub-s. 2.

(*c*) It ought to be observed that notice is requisite, not only before a council shall pass a by-law for "stopping up, altering, widening, diverting, or selling any original allowance," but "for establishing, *opening*, stopping up, altering, widening, diverting, or selling any other public highway, road, street, or lane." Under the old Acts it was held that no notice was necessary before passing a by-law to open a new road ; the clause then in force only applying to by-laws "for stopping up, altering, widening or diverting a road," &c. *Dennis* v. *Hughes*, 8 U. C. Q. B. 444. It was at one time contended that municipal councils had only authority to change the direction of existing roads, and to widen or otherwise alter them, not to make *new* roads ; but it is now settled that such councils have power to make new roads through any person's lands, not merely as substitutes for other roads running near and between the same points, but to afford a passage from one point to another where there has been no passage before. *Ib.* It seems that a road is not made, &c., when a by-law authorizing the making of it is passed, but only that it is authorized to be made, &c., by the proper officer acting in a reasonable manner. *Ib.* As to stopping up, &c., it is not necessary for the council to do more than close or abolish the highway by their enactment. They are not required to fence it in, or to place any physical obstruction in the way of persons passing. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. *Johnson* v. *Reesor*, 10 U. C. Q. B. 101. A by-law closing a road across a lot where there was more than one road was held void for uncertainty in not shewing which road was meant. *Wannamaker* v. *Green*, 10 O. R. 457. A street on a registered plan was, under R. S. O. 1877, c. 111, s. 84 (now Rev. Stat. c. 114, s. 86), closed by an order of the County Judge, after hearing numerous

Notice to be posted up.

1. Until written or printed notices of the intended by-law have been posted up one month previously in six of the most public places in the immediate neighbourhood of such original allowance for road, street, or other highway, road, street, or lane; (*d*)

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parties, including the defendant municipality. A by-law having been passed subsequently declaring open the street so closed, the by-law was quashed as having been passed in disregard and contempt of the order. *Waldie* v. *Burlington*, 7 O. R. 192; 13 A. R. 104.

(*d*) Notices in the English language are intended. See *Graham* v. *King*, 11 Am. 401. The notice should state the day on which the council intend to consider the by-law, and it would seem that the fact of the relator having knowledge *aliunde* is not an answer to an application to quash a by-law. *Re Birdsall and Asphodel*, 45 U. C. Q. B. 149. The Court, on an application to quash a by-law, will assume that the council have acted regularly in their preliminary proceedings till the contrary be shewn. *In re Lafferty and Wentworth and Walton*, 8 U. C. Q. B. 232; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. It would be well, however, that the corporation should in every case preserve proof of regular notices by affidavit of the person employed to put them up. *Per* Robinson, C. J. *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 235. The provisions as to the posting of the notices are conditions precedent to the right of the council to pass the by-law. *Wannamaker* v. *Green*, 10 O. R. 457. Where applicant, attacking a by-law, ventured to go no further than file an affidavit of a person who said he had no recollection of seeing any notice, without asserting his belief that due notice had not been given, or taking any means whatever to ascertain whether or not the notices were put up, the Court refused to interfere. *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492. So where applicant did not positively negative any notices having been put up, the Court refused to interfere, although the municipal council did not prove that six notices were put up. *Parker* v. *Pittsburg and Howe Island*, 8 U. C. C. P. 517. See also *In re Baker and Saltfleet*, 31 U. C. Q. B. 386. Where the notice described the road as intended to cross not only the four lots mentioned in the by-law, but also the five others next west of them, it was held that the variance was not fatal. *Re Ostrom* v. *Sidney*, 15 O. R. 43. It is not necessary that such notices should be framed with such particularity as to require recourse to be had to a lawyer before framing them. See *Reg.* v. *Powell*, L. R. 8 Q. B. 403. To a declaration in trespass *quare clausum fregit*, the defendant filed several pleas, justifying the trespass as done by him as servant of the municipal council of the united counties of Wentworth and Halton, and by their command, in pursuance of a by-law passed on the 31st January, 1850, in accordance with the provisions and requirements of the Municipal Act of 1849, which came into force on 1st January, 1850. Held, on demurrer, that it was a valid objection to the several pleas, that they did not shew a calendar month's notice given previous to the passing of the by-law; that on the contrary they imported on the face of them that it could not have been given, because the by-law was passed within a month after the Municipal Act of 1849, came into operation. *Lafferty* v. *Stock*, 3 U. C. C. P. 1. A notice given on

And published in a newspaper.

2. And published weekly for at least four successive weeks in some newspaper (if there be any) published in the municipality; or if there be no such newspaper, then in a newspaper published in some neighbouring municipality; and in either case, in the county town, if any such there be; (*e*)

Parties prejudicially affected to be heard.

3. Nor until the council has heard, in person or by counsel or solicitor, any one whose land might be prejudicially affected thereby, and who petitions to be so heard; (*f*)

Clerk to give the notices on payment of expenses.

4. And the clerk shall give such notices, at the request of the applicant for the by-law, upon payment of the reasonable expenses attendant on such notices. (*g*) 46 V. c. 18, s. 546.

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the 28th March for the 28th of April is bad. *Re Laplante and Peterborough*, 5 O. R. 634.

(*e*) It will be observed that the statute does not fix any number of insertions of the by-law in a newspaper, but the publication weekly for a fixed period, viz., "at least four successive weeks." If, therefore, the final publication be on a Saturday, that week would expire on the following Friday, and so for each successive week. A notice first published on Thursday, the 12th January, for Tuesday, the 7th February, was held not to be a publication for "four consecutive weeks." *In re Coe and Pickering*, 24 U. C. Q. B. 439; see also *In re Miles and Richmond*, 28 U. C. Q. B. 333.

(*f*) Where applicant, being aware of the day of the passing of the by-law, gave notice that he intended opposing the same, but took no further steps in opposition until making an application to the Court to quash the by-law, his rule was discharged. *Parker* v. *Pittsburgh and Howe Island*, 8 U. C. C. P. 517. Where the person intending to oppose a by-law to open a road appeared before the council, and took only general grounds of opposition, the Court afterwards, when he applied to quash the by-law on grounds more specific, declined to interfere. *In re Scarlett and York*, 14 U. C. C. P. 161. See also *Re Vashon and East Hawkesbury*, 30 U. C. C. P. 194. Before paying for land, required for the purposes of a highway, investigation should be made into the title. A mortgagee was held entitled to compel payment of the compensation, although the township council had previously, in ignorance of the mortgage paid the amount to an attaching creditor of the mortgagor. *Dunlop* v. *York*, 16 Grant 216; see further *Cameron* v. *Wigle*, 24 Grant 8.

(*g*) The right of the clerk is to exact "the reasonable expenses attendant on such notices." The municipality has no right to throw the expense of opening an ordinary road on the petitioners. *Lafferty* v. *Stock*, 3 U. C. C. P. 1; but a by-law directing the occupants of an original allowance for road to open the same at their own expense, held not to be illegal. *In re McMichael and Townsend*, 33 U. C. Q. B. 158. Where it is the clear duty of a municipal council to make a road, the Court may grant a mandamus to compel the performance of that duty. *In re Augusta and Leeds and Grenville*, 12 U. C. Q. B. 522; *In re the Townships of Moulton and Canborough and the County*

Provision where price settled by agreement.

5. In case the council of a township or an incorporated village, and property owners interested in lands required to be taken possession of, for establishing a public road, mutually agree as to the recompense or price of such lands, the council may accept a deed or deeds for the same, which shall be registered as provided by section 547 of this Act, and in such case the publication of any by-law in the manner required by sub-section 2 shall be dispensed with. 50 V. c. 29, s. 37.

Registration of Road By-laws.

By-laws under which roads are opened on private property to be registered.

547—(1) Every by-law passed since the 29th day of March, 1873, or hereafter to be passed by any municipal council under the authority of which any street, road or highway has been or is opened upon any private property, shall, before the same becomes effectual in law, (*h*) be duly registered in the registry office of the registry division in which the land is situate; and for the purpose of registration a duplicate original of the by-law shall be made out, certified under the hand of the clerk and the seal of the municipality, and shall be registered without any further proof. (*i*)

As to by-laws passed before 29th March, 1873.

(2) Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions passed before said day, under the authority of which any street, road, or highway has already been opened upon any private property, may at the election of any party interested, and at the cost and charges of such party or municipality, be also duly registered, (*k*) upon the production to the regis-

of Haldimand, 12 A. R. 503. The council, in opening a road, must act by by-law. *Reg.* v. *Rankin*, 16 U. C. Q. B. 304.

(*h*) It is esssential to the validity of a by-law under the authority of which a street, road or highway shall be opened through private property, that the by-law be registered as required by this section. The section has is not a retrospective effect. *Beveridge* v. *Creelman*, 42 U. C. Q. B. 29.

(*i*) It is only a duplicate original of the by-law that can be registered, and such duplicate original must be certified under the hand of the clerk and seal of the municipality If so certified, it may be registered without further proof. If not so certified, it is apprehended the registrar may reject it.

(*k*) In the case of streets, &c., opened after the 29th of March, 1873, the section is imperative. In the case of streets, &c., opened before that date, the duty is optional. See *Beveridge* v. *Creelman*, 42 U. C. Q. B. 29. The option may be exercised by any party interested. If exercised, it is to be at the cost and charges "of such party or the municipality."

trar of aduly certified copy of the by-law under the hand of the clerk of the municipality and the seal of the municipality, (*l*) or by a duly certified copy of such order or resolution of the Quarter or General Sessions, given under the hand of the clerk of the peace as the case may be. (*m*) 46 V. c. 18, s. 547. *See also Rev. Stat.* c. 114, s. 75.

Disputes Respecting Roads.—Administration of Oaths.

Power to administer oaths in certain cases.

548. In case of disputes in any municipality concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a municipal council, the head of the council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. (*n*) 46 V. c. 18, s. 548.

Mistakes in Opening Road Allowances.

Municipality and officers thereof protected from actions arising from mistakes in opening road allowances

549—(1) In case any municipality in whose jurisdiction an original road, or allowance for road is situate, shall open that which they take and believe to be the true site of the same, and in case the municipality, their officers and servants, shall act in good faith, and shall take all reasonable means to inform themselves of the correctness of their line and work, and in case it appears that the road being opened, although not or not altogether upon the true line of the original road or allowance for road, is nevertheless, from any difficulty in discovering correctly the true line, as near to, or as nearly upon, the true line as under the circumstances could then be ascertained, no action shall be brought by any person against the municipality, their officers or servants, for or in respect of the opening of such road, or allowance for road, or for any other act or matter whatsoever connected with or arising from the same. (*o*)

(*l*) See note *e* to sec. 332.

(*m*) In the case of a certified copy of an order or resolution of the Quarter Sessions, no seal is made necessary. If given under the hands of the Clerk of the Peace, no more will be required for purposes of registration.

(*n*) It is not intended to give municipal councils jurisdiction to *try* and *determine* disputed boundaries, &c., but only to institute such an investigation respecting such roads or lines, &c., as is material to the exercise of the jurisdiction which the councils possess. The section is founded on s. 126 of 12 Vict. c. 81.

(*o*) This provision applies only where the council have in good

(2) The municipality shall, however, in any case respecting the opening of an original road, or road allowance make to any person having title to or interest in the same, reasonable compensation in full of all claims, and as a final settlement of the same: Provided the claims for such compensation shall be made within one year from the time of the laying out or taking possession of such road by the municipality or its officers, or the part thereof in respect of which compensation is claimed, and in the event of the parties not agreeing as to the amount or terms of such compensation, the same shall be ascertained and the payment thereof enforced, under the provisions of this Act relating to arbitrations. (*p*). 46 V. c. 18, s. 549.

Municipality to make compensation.

Proviso.

DIVISION II.—POWERS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES IN RELATION TO ROADS AND BRIDGES.

General Powers, *Sec.* 550 (1, 2).
Respecting Tolls. *Sec.* 550 (3-5).
" *Timber, Stone, etc. on Road Allowances.* *Sec.* 550 (6).
" *Privileges to Road or Bridge Companies.* *Sec.* 550 (7).
" *Procuring Materials for Constructing or Repairing Roads.* *Sec.* 550 (8).
" *Road Allowances.* *Sec.* 550 (9), 551-553.
" *Aid to Adjoining Municipalities in Making Roads or Bridges.* *Sec.* 554.

550. The council of every county, township, city, town, and incorporated village may pass by-laws—

By-laws may be made for

General Powers.

1. For opening, making, preserving, improving, repairing, widening, altering, diverting, or stopping up roads, streets, squares, alleys, lanes, bridges, or other public communications within the jurisdiction of the council, (*a*) and for entering

Opening or stopping up roads, etc.

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faith intended to open a road allowance, but by mistake have not done so on the true line. *Beemer* v. *Grimsby*, 8 O. R. 98.

(*p*) See sec. 385 *et seq.*

(*a*) It is by section 546 enacted that *no council* shall pass a by-law

upon, breaking up, taking or using any land in any way ne-

for stopping up, altering, widening, diverting, or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting, or selling any *other* public highway, road, street, or lane, until, &c. This subsection expressly gives the powers which are there given by implication. As to the meaning of similar words, see *Welsh* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfeather*, 5 Taun. 634; *Reg.* v. *Shiles*, 1 Q. B. 919; *Wright* v. *Frant*, 4 B. & S. 118; *Reg.* v. *Phillips*, L. R. 1 Q. B. 648. Municipal corporations are empowered not only to change the direction of existing roads, but to open new roads, see note *c* to sec. 546; and, subject to certain limitations, empowered to stop up existing roads without substituting new roads, see note *b* to sec. 546; and are obliged, under penalties civil and criminal, to keep all existing roads in repair, see sec. 531. A municipal corporation laying out a square or park on lands acquired by them untrammelled by any trust as to their disposal, may deal with them in any manner authorized by this section, at least where no private rights have been acquired in consequence; but lands dedicated by the owner for a special purpose cannot be so dealt with, that case being provided for by sec. 504, sub-s. 8. *Re Peck and the Corporation of Galt*, 46 U. C. Q. B. 211. A municipal corporation cannot validly bind itself to make a by-law for the opening of a street. *Brunet* v. *Cote St. Louis*, M. L. R. 1 Q. B. 103. It is discretionary with and not obligatory upon a municipal council to open a road allowance, and the fact that a by-law has been passed, does not create such an obligation. *Re Wilson and Wainfleet*, 10 P. R. 147. Where a by-law was passed to open a free road solely to enable the public to avoid travelling upon a toll road and thus escape payment of toll, the free road not being otherwise required for the public convenience, it was held that the by-law could not be supported. *In re Carpenter and Barton*, 15 O. R. 55. It seems doubtful whether power is given to any municipal body to close a section of a road running through more than one municipality. See *Hewison* v. *Pemboke*, 6 O. R. 170.

The statute 12 Viet. c. 81, s. 60, empowered municipal corporations to pass by-laws not only for opening, making, preserving, improving, repairing, widening, altering, and diverting streets, but for *levelling*, *raising*, and *lowering* them, and omitted in any manner to provide for payment of compensation to persons whose land was injuriously affected by the exercise of these powers; and so it was held that such persons could not at law maintain actions for damages arising to their property from a change of level in the streets. *Croft* v. *Peterborough*, 5 U. C. C. P. 35; *Reid* v. *Hamilton*, *Ib.* 269; *Reg.* v. *Perth*, 14 U. C. Q. B. 156. See further, *Lewis* v. *Toronto*, 39 U. C. Q. B. 343; *Bissell* v. *Collins*, 15 Am. 217; *City of Dixon* v. *Baker*, 16 Am. 591, note 593; *Mitchell* v. *Mayor of Rome*, 15 Am. 669; *City of Quincy* v. *Jones*, 20 Am. 243; *Transportation Co.* v. *Chicago*, 99 U. S. 635. No such words are used in this section. See, however, sec. 554 and see. 567, sub-s. 1. Macaulay, C. J., in *Croft* v. *Peterborough*, 5 U. C. C. P. 45, said, "I am at present disposed to think it within the general and incidental powers of the defendants to maintain, repair and improve the public streets of the town placed under their charge, and in doing so to raise or lower them

cessary or convenient for the said purposes, subject to the

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as may be found necessary, judicious or convenient for the public use, not exceeding what is reasonably requisite and proper, and doing no unnecessary injury to the property of others, but using due care and precaution to avoid injury to the same. But if the work cannot be justified on such grounds, then, in the absence of *any by-law*, I think the defendants would be responsible to the injured parties." Again he says, "Whatever is cast upon the defendants as *executive* duties, under the statutes in relation to the maintenance or repair of the roads, or whatever is fairly included in those terms, they may do without a by-law. When not so, and it is only within their discretion in the exercise of their *legislative* powers, it would be otherwise." In *Reid* v. *Hamilton*, 5 U. C. C. P. 287, he said, "My present impression is, that whenever the acts to be done by the municipality will invade private rights, *which may be so invaded legally* through the medium of by-laws, and for which if not legalized by the statutes creating or the powers conferred upon the corporation, the party injured may maintain an action against the wrong-doer, a by-law is essential to enable the municipality to justify the act, unless it can be shewn to be a repair of a highway," &c. See also *Pratt* v. *Stratford*, 14 O. R. 260. The council of a city, town or incorporated village has power to pass by-laws for ascertaining and compelling owners, tenants, and occupants to furnish the council with the levels of their cellars, such levels to be with reference to a line fixed by the by-laws, sec. 496, sub-s. 32; and before commencing the erection of any building, to deposit a ground plan of the building, with the levels of the cellars and basements thereof, *Ib.* sub-s. 33. But no power now exists in express terms to change the level of a street to the prejudice of owners of land abutting thereon. The general rule is, that when private rights are interfered with for the public advantage, compensation is given. See sec. 483, and notes thereto. In a recent case, where a person was complaining of an injury to his property by reason of a change in the level of the street, Kelly, C. B., said, "I cannot but observe, in a case like this, that whenever it appears that the case is one in which it is plain that very serious injury may have been done to the premises of the party claiming compensation, I think that we must put a liberal construction upon the Acts of Parliament before us in determining the points raised. Unless it is perfectly clear that the language of the different Acts is not sufficiently ample or extensive to embrace the case in question, we ought to hold that a party whose property is injuriously affected, and to a very great extent by the operations of a public body, *shall be entitled in a court of law to compensation.*" *Reg.* v. *St. Luke's*, L. R. 7 Q. B. 148-153. See further *Rigg* v. *London*, L. R. 15 Eq. 376; but see also *Ferrars* v. *Commissioners of Lewis*, L. R. 4 Ex. 227; *Baker v. Vestry of Marylebone*, 24 W. R. 848. This is in accordance with the decisions of our courts in several cases, where the complaint was that the plaintiff's land was flooded by municipal corporations, in their efforts to drain, and so keep in repair, public highways vested in them. *Brown* v. *Sarnia*, 11 U. C. Q. B. 87, *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32 U. C. Q. B. 562; *McGarvey* v. *Strathroy*, 10 A. R. 631; *Rowe* v. *Rochester*, 22 U. C. C. P. 319. In the last mentioned case, Hagarty, C. J., said, "No power

restrictions in this Act contained; (*b*) for setting apart

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is conferred upon them (the corporation) to do any such injurious act. No provision is made for compensating any person injured by this performance of their statutable duties. In the absence of any such power, it seems to us impossible to accede to the defendant's argument. It may be quite possible that the defendants have the right to raise or lower the level of this road, and that no remedy is given to persons injured or inconvenienced thereby. But it is a totally different matter when the acts complained of amount to an interference with the natural flow of the water, or to the gathering of scattered waters into one course, and causing them to flow upon adjoining lands. The question, however, seems not open to discussion unless a Court of Error interpose." *Ib.* 320. As to compensation for injury caused by changing level of streets. See note *c* to sec. 483. See also *Mayor of St. John* v. *Pattison*, Cassel's Digest 96; *Turgeon* v. *Montreal*, M. L. R. 1 S. C. 111. In *Callender* v. *Marsh*, 1 Pick. (Mass.) 417, it was said that those who purchase house lots bordering upon streets are supposed to calculate the chance of such elevations and reductions as the increasing population of the city may require, &c. This case has been approved in the courts of every State of the Union except one. *Per* Randal, C. J., in *Dorman* v. *Jacksonville*, 7 Am. 253. In the United States, therefore, it is generally held that a municipal corporation is not responsible, unless expressly so declared by statute, for mere consequential damages resulting from a change of grade in a street where there is no negligence in the doing of the work. See *Dillon* on Municipal Corporations, 3rd ed., sec. 990. If the power be exercised in an unreasonable manner, or wantonly and maliciously, the rule is different. *Roberts* v. *Chicago*, 26 Ill. 249; *Rudolphe* v. *New Orleans*, 11 La. An. 542; *Rounds* v. *Mumford*, 2 Rh. I. 154; *Louisville* v. *Rolling Mill Co.*, 3 Bush. (Ky.) 416; *Dorman* v. *Jacksonville*, 13 Fla. 538; *S. C.* 7 Am. 253. But in Ohio the corporation is held liable, even though the change of grade be lawful and judiciously made. *McCombs* v. *Akron*, 15 Ohio 474; 18 Ohio 229. The corporation is to judge of the necessity for a change of grade. *Macy* v. *Indianapolis*, 17 Ind. 267; and of the best grade to adopt. *Snyder* v. *Rockport*, 6 Ind. 237; *Reynolds* v. *Shreveport*, 13 La. An. 426; *Roberts* v. *Chicago*, 26 Ill. 249. Where the statute gives a specific remedy for compensation, it alone can be properly pursued. *Andover and Medford Turnpike Corporation* v. *Gould*, 6 Mass. 40; *Ernst* v. *Kunkle*, 5 Ohio St. 520; *Hovey* v. *Mayo*, 43 Me. 322; *Cole* v. *Muscatine*, 14 Iowa 296. A by-law of a county council, appropriating a certain sum of money "to be expended on certain roads within the county (not defined), in such manner as the township and town councillors may think proper," has been held bad. *In re Conger and Peterborough*, 8 U. C. Q. B. 349. So a by-law taxing the wild lands of a district, "for the purpose of improving the roads and bridges (not defined), and liquidating the debts of the district." *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.

(*b*) It is by sec. 483 expressly provided that every council shall make to the owners or occupiers of or other persons interested in real property entered upon, taken or used by the corporation in the exercise of any of its powers, or injuriously affected by the exercise of

and laying out such portions of any such roads, streets, squares, alleys, lanes, bridges, or other communications as the council may deem necessary or expedient for the purposes of carriageways, boulevards, and sidewalks, or for the improvement or beautifying of the same; and for preventing and removing any obstruction upon any roads or bridges within its jurisdiction, and also for permitting subways for cattle under any highway; (*c*) 46 V. c. 18, s. 550; 51 V. c. 28, s. 32.

Roads across railway, lands.

2. For establishing, opening, making, preserving, improving, maintaining, widening, enlarging, altering, diverting, or stopping up, within the limits of the municipality, any highway through, over, across, under, along, or upon the railway and lands of any railway company, and for entering upon, breaking up, taking or using any such land in any way necessary or convenient for the said purpose; but subject to the provisions contained in *The Railway Streets and Drains Act*, and provided that the highway is within the jurisdiction of the council; Rev. Stat. c. 199.

Tolls.

Raising money by toll.

3. For raising money by toll on any bridge, road or other work, to defray the expense of making or repairing the same; (*d*).

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its powers, due compensation for damages resulting therefrom. So in the case of land entered upon, taken or used, there is a positive restriction, unless upon payment of due compensation. The difficulty arises in cases where the injury is not direct but indirect, and such as mentioned in the previous note. It is clear that no municipal council has a legal right to say they may trespass a little upon the property of a private person, doing no unnecessary damage, unless they shew that it was necessary and convenient for the purposes of the road, street or other work. *Churchwardens of St. George's Church* v. *Grey*, 21 U. C. Q. B. 265. Unless a by-law were shewn, the corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. *Ib.*

(*c*) A sub-way is a way or passage under a highway. Being under this section, designed merely for the use of cattle, pedestrians would not have a right to use such sub-way for ordinary travel so as to hold the municipal corporation responsible for accidents from non-repair.

(*d*) It is a principle of law that taxes and tolls are not to be imposed by any latitude of construction given to an Act of Parliament. The authority for them must be clear and express. *Wilson* v. *Groves*, 17 U. C. Q. B. 419, 424. The amount of tolls authorized by this sub-section appears, subject to limitation, left to the discretion

Making regulations as to dangerous places.

4. For making regulations as to pits, precipices, and deep waters, and other places dangerous to travellers; (*e*).

Granting right to take tolls.

5. For granting to any person, in consideration or part consideration of planking, gravelling, or macadamizing a road, or of building a bridge, the tolls fixed by by-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a by-law of the council authorizing tolls to be collected, (*f*) and the grantee of the tolls shall, during

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of the municipality. *Municipality* v. *Pease*, 2 La. An. 538; *Muscatine* v. *Hershey*, 18 Iowa 39. And the limitation in effect is, that they be no more than sufficient "to defray the expense of making and repairing" the bridge, road or other work. See *In re Campbell and Kingston*, 14 U. C. C. P. 285. It has been held that a municipal corporation which acquired a public road or bridge is bound by stat. 16 Viet. c. 190, s. 31 (Rev. Stat. c. 159, s. 91), and is not entitled to collect tolls for merely crossing any road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed 100 yards. *Wilson* v. *Groves*, 17 U. C. Q. B. 419. And thus although a portion of the road be a bridge, and a by-law be passed authorizing the collection of tolls for the use of such bridge. *Wilson* v. *Middlesex*, 18 U. C. Q. B. 348. Councils of counties and incorporated villages may pass by-laws for the assumption by the village of any bridge within its limits under the jurisdiction of the county council, and for such bridge being toll free. Sec. 529.

(*e*) This sub-section should not have been placed with the clauses relating to "tolls." Dangerous places on a highway subject the corporation in whom the highway is vested to an action for damages for injury arising from such places being allowed to remain in the highway. See note *p* to sec. 531. The power to regulate such places is therefore essential to the protection of the corporation, as well as the safety of the travelling public. The power to pass by-laws for the purposes mentioned in this section is permissive, not obligatory. *Wilson* v. *Mayor of Halifax*, L. R. 3 Ex. 114; but see *Toms* v. *Whitby*, 35 U. C. Q. B. 195. No one is at liberty to leave an excavation of any kind adjoining a highway if it render the highway unsafe for the use of travellers. *Barnes* v. *Ward*, 9 C. B. 392; *Hadley* v. *Taylor*, L. R. 1 C. P. 53. See also *Cornwall* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; *Hardcastle* v. *South Yorkshire R. W. and River Dun Co.*, 4 H. & N. 67.

(*f*) A grant for a term of years is authorized for a consideration stated. The grant is to be of the tolls fixed by by-law to be levied, &c. The term is not to be more than twenty-one years, and the consideration, or part consideration, is to be that of planking, gravelling or macadamizing the road, &c., or of building a bridge, &c. The right of the lessee to sue in his own name for tolls is doubtful. *Whiteside* v. *Bellchamber*, 22 U. C. C. P. 241; *Hinckley* v. *Gildersleeve*, 19 Grant, 212. As to the rate of tolls, see note *d* to sub-s. 3 of this section.

the period of his right thereto, maintain the road or bridge in repair; (*g*)

Timber, Stone, etc., on Road Allowances.

For preservation of trees, stone, etc.

6. For preserving or selling timber, trees, stone, sand, or gravel, on any allowance or appropriation for a public road; (*h*) but this shall be subject to the provisions of *The Act respecting Timber on Public Lands* relative to Government road allowances and the granting of Crown timber licenses; (*i*)

Rev. Stat. c. 28.

Granting Privileges to Road or Bridge Companies.

Granting privileges to road or bridge companies.

7. For regulating the manner of granting to road or bridge companies permission to commence or proceed with roads or bridges within its jurisdiction, and for regulating the manner of ascertaining and declaring the completion of the work so as to entitle such companies to levy tolls thereon, and for regulating the manner of making the examinations necessary for the proper exercise of these powers by

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(*g*) See note *z* to sec. 535.

(*h*) The right of a municipal corporation to sell timber growing and standing on a road allowance, so as to vest property in the trees in the vendee was at one time doubted. *Cochran* v. *Hislop*, 3 U. C. C. P. 440. But express power to sell includes the power to pass the property, and also gives the right to recover the value of trees wrongfully taken from a road allowance. *Burleigh* v. *Hales*, 27 U. C. Q. B. 72. If there were no such provision, the property in trees growing on original road allowances would undoubtedly be in the Crown as the owner of the soil. The leading object of the reservation of road allowances, however, was not to grow timber trees upon them, but that they should be subservient to the use of settlers upon land adjoining or near thereto, as well as of the general public. *Per* Draper, C. J., *Ib.* 76. See also *Burleigh* v. *Campbell*, 18 U. C. C. P. 457. In the absence of legislation, the Crown has no right, without the consent of the municipality, to sell standing timber on road allowances. *Barrie* v. *Gillies*, 20 U. C. C. P. 369; 21 U. C. C. P. 213. The section also empowers the council to sue persons for removing sand or gravel from the highway. *Brock* v. *Toronto and Nipissing R. W. Co.*, 37 U. C. Q. B. 372.

(*i*) This Act declares road allowances to be ungranted lands for the purpose of granting licenses to cut timber; gives the right to the government licensee to cut the same; declares that no municipal by-law shall have any effect against such a license, but entitles the municipalities to a portion of the timber dues, to be expended on the improvement of highways within the municipality. Rev. Stat. c. 28, s. 3, *et seq.* These sections were passed in consequence of the decision in *Barrie* v. *Gillies*, mentioned in the last note.

the council; (*k*) 46 V. c. 18, s. 550 (2-7). *See also Rev. Stat.* c. 159.

Procuring Materials for Constructing or Repairing.

Power to take materials for roads.

8. For searching for and taking such timber, gravel, stone, or other material or materials (within the municipality) as may be necessary for keeping in repair any road or highway within the municipality; and, for the purpose aforesaid, with the consent of the council of an adjoining municipality (by resolution expressed) for searching for and taking gravel within the limits of such adjoining municipality, and the right of entry upon such lands, as well as the price or damage to be paid to any person for such timber or materials, shall, if not agreed upon by the parties con-

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(*k*) The Legislature has conferred upon municipal corporations very extensive powers in relation to public highways. Upon these corporations, in the first place, is devolved the duty—and perhaps it may be found the option also—of constructing roads and bridges throughout the several localities represented by municipal councils. Before others can legally exercise these powers, permission is required from the local municipal corporation. The power to grant permission involves the power to withhold it; and if a road company were, without such permission, to attempt to interfere with the highways of the municipality, the court, upon an application made at the proper time, grounded on proper materials no doubt would interfere by injunction. *Attorney-General ex rel. The Township of Nepean* v. *Bytown and Nepean Road Co.*, 2 Grant 626. The power is not only to grant or withhold permission to commence, but, if granted, to make regulations for the completion of the work, and to make the examinations necessary for the proper exercise of these powers. So that the controlling and directing power is, as it were, vested in the municipal corporations. See note *n*, to sub-s. 36 of sec. 496. No company formed under the Joint Stock Companies Road Act is allowed to commence any work until thirty days after the directors have served a written notice upon the head of the municipality in the jurisdiction of which such road is intended to pass or be constructed. Rev. Stat. c. 159, s. 12. If the council pass a by-law prohibiting, varying or altering any such intended line of road, the by-law shall have the same force and effect, and be as obligatory upon all persons and upon the company, if the company proceed in the construction of the road, as if the provisions thereof were part of the Act. *Ib.* But if no by-law be passed within thirty days after service of the notice, then the company may proceed with the intended road, without being liable to any interruption or opposition from any source whatever. *Ib.* sec. 13. No such road, however, shall, be constructed or pass within the limits of any city, or of any incorporated town or village, except by permission, under a by-law, of the city, town, or village, passed for the purpose. *Ib.* sec. 8.

cerned, be settled by arbitration under the provisions of this Act; (*l*)

(*a*) But no such gravel shall be taken or removed from the premises of any person in an adjoining municipality until the price or damage has been agreed upon between the parties or settled by arbitration. 48 V. c. 39, s. 23.

Selling Road Allowances.

When the council may stop up or sell a road allowance.

9. For selling the original road allowance to the parties next adjoining whose lands the same is situated, when a public road has been opened in lieu of the original road allowance, and for the site or line of which compensation has been paid, and for selling in like manner to the owners of any adjoining land any road legally stopped up or altered by the council; and in case such parties respectively refuse to become the purchasers at such price as the council thinks reasonable, then for the sale thereof to any other person for the same or a greater price. (*m*) 46 V. c. 18, s. 550 (9).

(*l*) This is an exercise of eminent domain, and so is made expressly subject to the payment of compensation. See sec. 483, and notes thereto. See also sec. 335 *et seq.* A corporation acting under this subsection must by the by-law or by the notice to the owner define the quantity of gravel required and the arbitrators should, by their award, fix the value of the quantity required, and also the amount to be paid for the right of entry to take the same away. *Re Ingersoll* v. *Carroll*, 1 O. R. 488.

(*m*) Where a public road has been opened through private property, in lieu of an original allowance for road, for which compensation has been paid, the original allowance may be sold "to the *parties* next adjoining whose lands the same is situated." The allowance may, adjoin on each side the lands of different parties, and it then becomes a question whether the council is bound to sell to each one half of the allowance, or may sell the whole to one. Similar authority is conferred as to "any road legally stopped up and altered by the council." If the parties entitled to preemption refuse to purchase, then, and only then, is the council authorized to sell to any *other* person. See *Reg.* v. *Highway Board of Drayton in Hales*, 1 Q. B. D. 608. The statute does not require the corporation to do more than close or stop up the road allowance. They are not required to fence it in or place any physical obstruction in the way of persons using it. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. The selling of the road allowance is one thing; the stopping up of a road allowance is an entirely different thing. The sale is by no means necessary to the extinction of the public easement. *Johnson* v. *Reesor*, 10 U. C. Q. B. 101. The stopping up an

When a road is substituted for an original allowance without compensation to person whose land is taken, such person if he owns lands adjoining to be entitled to original road.

551—(1) In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto, in lieu of the road so laid out, (*n*) and the council of the municipality, upon the report in writing of its surveyor, or of a deputy provincial land surveyor, that such new or travelled road is sufficient for the purposes of a public highway, (*o*) may

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original allowance for road is a distinct thing from selling and conveying it, and requires to be distinctly and directly provided for. Until a by-law has been passed to stop up the allowances they still continue public highways and cannot be sold or conveyed. *Per* Robinson, C. J., in *In re Choate and Hope*, 16 U. C. Q. B. 428. Where it is contended by a private individual that a road allowance has been legally stopped up and conveyed to him, he must show that all the proceedings made necessary in that behalf have been taken by the corporation. *Winter* v. *McKeown*, 22 U. C. Q. B. 341.

(*n*) So far, this section provides for two cases: first, where a person in *possession* of a concession road or side line has *himself* laid out and opened a road, &c., in place thereof; secondly, where a new or travelled road has been laid out and opened by, it is conceived, *the proper authority*, in lieu of an original allowance for road, &c. In either case, if no compensation has been paid to the owner of the land, and if his lands adjoin the concession road, side line, or original allowance, he shall be *entitled* to the original road allowance in lieu of the road laid out. It is not clear whether or not a person who is a mere locatee from the Crown of the land through which the new road runs, can afterwards, by obtaining the patent, become an owner within the meaning of this section, so as to be entitled to a conveyance of the old road allowance. *Winter* v. *McKeown*, 22 U. C. Q. B. 341. See further *Cameron* v. *Wait*, 27 U. C. C. P. 475; 3 A. R. 175.

(*o*) It is a clear principle of law that every intendment is to be made in favour of the public, and against the individual who seeks to deprive the public of the right which it is confessed the public once had, and that it is incumbent upon the individual who asserts a private right acquired over a public one which was once vested, that he shall do so upon clear, irrefragable evidence, and that nothing shall be left to depend upon conjectural inference and assumption. *Purdy* v. *Farley*, 10 U. C. Q. B. 545, 568; see also *Reg.* v. *Great Western R. W. Co.*, 32 U. C. Q. B. 506. The surveyor's report should be express that the new and travelled road is sufficient for the purposes of a public highway; and in the report he should state the width of the new road and the line to be run. *Reg.* v. *Sanderson*, 3 U. C. Q. B. O. S. 103; *Purdy* v. *Farley*, 10 U. C. Q. B. 545; see further, *Reg.* v. *Phillips*, L. R. 1 Q. B. 648.

convey the said original allowance for road in fee simple to the person or persons upon whose land the new road runs. (*p*)

Compensation to party whose land is taken who does not own land adjoining original road.

(2) When such original road allowance is, in the opinion of the council, useless to the public, and lies between lands owned by different parties, the municipal council may subject to the conditions aforesaid, sell and convey a part thereof to each of such parties as may seem just and reasonable ; (*q*) and in case compensation was not paid for the new road, and the person through whose land the same passes does not own the land adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance when sold shall be paid to the person who at the time of the sale owns the land through which the new road passes. (*r*) 46 V. c. 18, s. 551.

Possession of Unopened Road Allowances.

Original allowances for roads when to be deemed legally possessed till a by-law is passed for opening them.

552. In case a person is in possession of any part of a Government allowance for road laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or is in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall be deemed legally possessed thereof, as against any private person, (*s*) until a by-law

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(*p*) The words "may convey" are compulsory and the corporation cannot refuse a conveyance to the person entitled to it. *Per* Harrison, C. J., in *Cameron* v. *Wait*, 3 A. R. 175. See also, note *l* to sec. 527.

(*q*) See note *m* to sub-s. 8 of sec. 550.

(*r*) If the person from whom the land for the new road is taken has not land adjoining the old road allowance, the allowance would be of little or no use to him. For this reason it is provided that in such case the allowance shall be sold, and the proceeds paid to the person whose land is taken for the new road.

(*s*) This section provides for the security of, first, a person in possession of any part of a Government allowance for road, &c., not opened for use "by reason of *another* road *being used* in lieu thereof ;" and secondly, a person in possession of any Government allowance for road parallel or near to which "a road *has been established by law*, in lieu thereof," &c. A person so situated is to be deemed legally possessed as against any "*private person*," but not as against the Crown ; and he is to be deemed so possessed "until a by-law has been passed for opening such allowance," &c. So that as well against private persons as municipal councils, until a by-law is passed for opening, &c., he is to be deemed legally possessed. See *Curry* v.

for opening such allowance for road has been passed by the council having jurisdiction over the same. (*t*) 46 V. c. 18, s. 552.

Notice of By-laws for Opening such Allowances.

Notice of by-law to be given.

553. No such by-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the council, that an application

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McLeod, 12 U. C. Q. B. 545. By an Act of 1810 all allowances for roads laid out by public authority were declared, whether opened or not, used or not, "public highways." 50 Geo. III. c. 1, s. 12. But for the security of persons in possession of them when not used, it was in 1846 enacted that no allowance for road in possession of a private person should be opened unless upon notice to him, and the passing of an order of the proper municipal authority. 9 Vict. c. 8. Both these enactments are here in substance re-enacted. A person in possession of a road allowance where a new road has been opened or is used in lieu of it, to save himself from all disturbance, ought to acquire a legal title thereto, pursuant to sec. 551 of this Act. See *Purdy* v. *Farley*, 10 U. C. Q. B. 545; *Nash* v. *Glover*, 24 Grant 219; *McKillop* v. *Smith*, *Ib.* 278.

(*t*) A municipal corporation has a clear right to open an original allowance, for road, and in doing so must, at its peril, be correct as to its true position. The by-law should describe the boundaries of the allowance, if there be any uncertainty as to the true boundary. *McMullen and Caradoc*, 22 U. C. C. P. 356. "If the limits assigned be not the true limits of the side road as originally surveyed, the council has no jurisdiction to enact and declare that they shall be; and whether the declaratory enactment have any validity or not, a person *bona fide* contesting the true site of the road has, I think, reason to complain of such a clause being inserted in the by-law, as calculated to expose him to difficulties at any rate, if not to prejudice him in the conduct of any litigation which he may institute for the purpose of bringing the point in difference up for judicial inquiry. But in enacting that the original allowance shall be opened, although describing that road by metes and bounds, I do not see that the applicant can be prejudiced; for in any litigation arising upon the point, it would, I apprehend, in such a case be necessary to establish that the metes and bounds assumed to be, are in fact the true limits of the original allowance. The first clause of the by-law will have, therefore, to be quashed," &c. *Per* Gwynne, J., *Ib.* 360, 361. A by-law enacting that "every person or persons having enclosed or occupying any part or parts of said quarter town line (an original allowance for road) shall be required, on or before the first day of November next, to give up possession, and open the same for the use of the public travel; the same to be made by gratuitous or statute labour," &c., was held to be valid. *In re McMichael and Townsend*, 33 U. C. Q. B. 158. It is discretionary with a municipal council to open a road allowance. *Re Wilson* v. *Wainfleet*, 10 P. R. 147.

will be made for opening such allowance. (*u*) 46 V. c. 18, s. 553.

Aiding in making Roads and Bridges.

554. The council of any municipality may pass by-laws for granting aid to any adjoining municipality in making, opening, maintaining, widening, raising, lowering, or otherwise improving any highway, road, street, bridge, or communication passing from or through an adjoining municipality. (*v*) 46 V. c. 18, s. 554.

By-laws to aid adjoining municipality to open roads, etc.

DIVISION III.—POWERS OF TOWNSHIPS, CITIES, TOWNS, AND VILLAGES IN RELATION TO ROADS AND BRIDGES.

Aiding Counties in Opening New Roads. *Sec.* 555 (1).
Joint Works with other Municipalities. *Sec.* 555 (2).
Repair of Township Roads, how Enforced. *Secs.* 556-564.

555. The council of every township, city, town, and incorporated village may pass by-laws—

By-laws may be made for

New Roads.

1. For granting to the county or united counties in which such municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such municipality ; (*w*)

Aiding counties in making roads and bridges.

(*u*) There must be a notice in writing, which must be given to the person in possession *at least* eight days before the meeting of the council. See *In re Sams and Toronto*, 9 U. C. Q. B. 181. The object is to prevent his being taken by surprise in regard to the intention to open the road allowance of which he is in possession.

(*v*) In general, the jurisdiction of a municipal council is restricted within the boundaries of the municipality. See note *k* to sec. 20. see also note *b* to sec. 282. But as roads, streets, bridges, and other like public communications may extend from one adjoining municipality into another, so as to be partly in each, power is here given to pass by-laws for granting aid to an adjoining municipality in making, opening, maintaining, widening, raising, lowering, or otherwise improving any such road, &c. See note *a* to sub. s. 1 to sec. 550.

(*w*) As a rule, councils of municipalities less than counties have not power spontaneously to assess themselves for county purposes. See note *b* to sec. 282. The power given by this clause is to grant aid, by loan or otherwise, towards opening or making any new road. See note *v* to sec. 554.

Joint Works with other Municipalities.

Joint works with other municipalities.

2. For entering into and performing any arrangement with any other council in the same county or united counties for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the council; (*x*) 46 V. c. 18, s. 555.

Repair of Township Roads—how enforced.

Township council failing to perform their duty.

556. Whenever township councils fail to maintain township boundary lines, not assumed by the county council, (*a*) in the same way as other township roads, by mutual agreement as to the share to be borne by each, it shall be competent for one or more of such councils to apply to the county council to enforce joint action on all township councils interested. (*b*) 46 V. c. 18, s. 556.

Resident ratepayers may petition county council to enforce opening up of road.

557. In cases where all the township councils interested neglect or refuse to open up and repair such lines of road in a manner similar to the other local roads, it shall be competent for a majority of the ratepayers resident on the lots bordering on either or both sides of such line to petition the county council to enforce the opening up or repair of such lines of road by the township councils interested. (*c*) 46 V. c. 18, s. 557.

(*x*) The arrangement should be a completed one, in order to render valid a by-law for carrying it into effect. See *In re Nichol and Almonte*, 41 U. C. Q. B. 577. See also *In re Carpenter and the Township of Barton*, 15 O. R. 55.

(*a*) See *O'Connor* v. *Otonabee and Douro*, 35 U. C. Q. B. 73.

(*b*) The roads here intended are "township boundary lines." Apparently the intention is to embrace roads dividing townships; otherwise there would be no necessity for a provision as "to the share to be borne by each" in respect of the obligation to open, repair and improve. It is true that in the case of townships adjacent to an unsurveyed tract, the provision would be in terms applicable, whether townships were divided or not by "the boundary line." But the probability is, that the Legislature meant the section to have a more extended operation. This supposition is confirmed by a reference to sec. 557, which gives certain powers to the ratepayers bordering "on either or *both* sides of such line." The county council is, in relation to such townships, as it were, made the arbiter. Power is given to the county council, on the application of any township interested "to enforce joint action" on all interested. The application should be by petition.

(*c*) The preceding section supposes that at least one of the town-

Action by county council on petition.

558. A county council receiving such petition, either from township councils or from ratepayers, as in the preceding section mentioned, may, (*d*) consider and act upon the same at the session at which the petition is presented. (*e*) 46 V. c. 18, s. 558.

Amount, etc., to be furnished by each township.

559. The county council may (*f*) determine upon the amount which each township council interested shall be required to apply for the opening or repairing of such lines of road, or to direct the expenditure of a certain portion of the statute labour, or both, as may seem necessary to make the said lines of road equal to other roads. (*g*) 46 V. c. 18, s. 559.

Commissioners to enforce order of county council as to such roads.

560. It shall be the duty of the county council to appoint a commissioner or commissioners to execute and enforce their orders or by-laws relative to such roads. If the representatives of any or of all the townships interested intimate to the council or to the commissioner or commissioners so appointed, their intention to execute the work themselves, then the commissioner or commissioners shall delay proceedings for a reasonable time; (*h*) but if the work is not proceeded with

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ships interested is disposed to do what is required of it. But if all interested fail to perform the duty cast upon them, a majority of the ratepayers resident on the lots bordering on either or both sides of such line may petition the county council to enforce the opening up or repair of such line. The time and mode of so doing are provided for by the next section.

(*d*) "May" is permissive. See note *x* to sec. 534. The original section, 29-30 Vict. c. 51, s. 341, sub. s. 4, provided that "*It shall be the duty*," of a county council receiving, &c. The change in language is designed to remove the duty, and leave the power to act as one of simple discretion.

(*e*) The action may be either by directing the expenditure of money, or the doing of statute labour, or both, as may seem necessary "to make the said lines of road equal to other roads." See sec. 559.

(*f*) See note *d* above.

(*g*) Any form of determination different from that authorized would be void.

(*h*) The mere order or direction of the county council, without power to enforce it against the townships interested, would be of little avail. Power is therefore given to county councils to appoint a commissioner or commissioners "to execute and enforce their orders or by-laws relative to such roads." This is, as it were *in terrorem;* for it is also provided that if the representatives (probably meaning reeves or deputy reeves) of any or all of the townships interested shall intimate to the council or to the commissioner or

during the favourable season by the township officers, then the commissioners shall undertake and finish it themselves. 46 V. c. 18. s. 560.

Sums determined upon to be paid by townships.

561. Any sum of money so determined upon by the county council as the portion to be paid by the respective townships, shall be paid by the county treasurer on the order of the commissioner or commissioners, and the amount retained out of any money in his hands belonging to such township: but if there are not at any time before the striking of a county rate any such moneys belonging to such township in the treasurer's hands, an additional rate shall be levied by the county council against such township sufficient to cover such advances. (*i*) 46 V. c. 18, s. 561.

When the several townships interested cannot agree.

Wardens to be arbitrators.

County judge also.

562. Whenever the several townships interested in the whole or part of any county boundary line road are unable mutually to agree as to their joint action in opening or maintaining such line road, or portion thereof, one or more of such township councils may apply to the wardens of the bordering counties to determine jointly the amount which each township shall be required to expend either in money or statute labour, or both, and the mode of expenditure on such road; (*j*) the County Judge of the county in which the township first making the application is situate shall in all cases be the third arbitrator. (*k*) 46 V. c. 18, s. 562.

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commissioners their intention to execute the work themselves, then the commissioner or commissioners may delay their proceedings. But the delay is only to be for "a reasonable time." If the work be not proceeded with during "the favourable season" by the township officers, then the commissioners shall undertake it, and finish it themselves.

(*i*) Where commissioners do the work, some provision is necessary for payment. It is therefore provided that the money shall be paid by the county treasurer, "on the order of the commissioner or commissioners." When so paid, the money is to be retained by the county treasurer out of any money in his hands belonging to the township. If none, then the county council may levy against such township a rate "sufficient to cover such advances."

(*j*) The county council is, as it were, made the arbitrator between townships in the same county. See note *b* to sec. 556. But where the townships are of different counties, the wardens of the counties are by this sub-section made the arbiters. Their power as such arbiters is to determine upon the amount which each township shall be required to expend, either in money or statute labour, or both, *and* the mode of expenditure.

(*k*) See note *g* to sec. 388.

Meetings of wardens.

563. It shall be the duty of the wardens of the counties interested to meet within twenty-one days from the time of receiving such application for the determination of the matter in dispute. The warden of the county in which the township first making the application is situated, shall be the convener of the meeting; and it shall be his duty to notify the warden of the other county and County Judge of the time and place of meeting, within eight days of the time of his receiving such application. (*l*) 46 V. c. 18, s. 563.

Who to convene, etc.

What the wardens and county judge shall determine, etc.

564. At such meeting the wardens and County Judge, or any two of them, shall determine on the share to be borne by the respective townships, of the amount required on the part or parts to be opened or repaired by each or both, and shall appoint a commissioner or commissioners to superintend such work, and it shall be the duty of the township, treasurer to pay the orders of the commissioners to the extent of the sum apportioned to each; and pathmasters controlling the statute labour on the lots adjoining such line on the portion of such line to be opened or repaired, shall obey the orders of the commissioner or commissioners in performing the statute labour unexpended. 46 V. c. 18, s. 564.

Division IV.—Powers of County and Township Councils in Relation to Roads.

Sale or Lease of Minerals on or under Roads.

Sale or lease of mineral rights under roads.

565.—(1) The corporation of any township or county, wherever minerals are found, may sell or lease, by public auction or otherwise, the right to take minerals found upon or under any roads over which the township or county may have jurisdiction, if considered expedient so to do. (*m*)

(*l*) The initiative rests upon the warden of the county in which the township that first made the application is situate. He is the convener of the meeting. It is made his duty to notify the warden of the other county *and* the County Judge of the time and place of meeting. This he must do "within eight days" of the time of his receiving the application. See note *b* to sec. 185.

(*m*) The freehold of a road, notwithstanding the dedication of the right of way to the public, remains in the owner of the soil. If the road were laid out by the Crown, the soil and freehold would remain still the property of the Crown. See note *g* to sec. 525. So if laid out by a private individual, the soil and freehold would still be the property of that individual. See note *k* to sec. 527. "Whatever

No sale or lease till after notice.

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road for at least one month previous to the time fixed for considering the by-law. (*n*)

Sale or lease not to interfere with public travel.

(3) The deed of conveyance or lease to the purchaser or lessee under the by-law shall contain a proviso protecting the road for public travel, and preventing any uses of the granted rights interfering with public travel. (*o*) 46 V. c. 18, s. 567.

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may be the reasons assigned in the case in Plowden (*Reg.* v. *Earl of Northumberland*, 1 Plow. 310) for the rule thereby established, and whether they approve themselves or not to modern minds, it is perfectly clear that ever since that decision it has been settled law in England that the prerogative right of the Crown to gold and silver found in mines will not pass under a grant of land from the Crown, unless by apt and precise words the intention of the Crown be expressed that it shall pass. It was fairly conceded by the learned counsel for the appellant that this rule must be taken to have been introduced as part of the common law of England into the colony of Victoria;" *Woolley* v. *Attorney General of Victoria*, 2 App. Cas. 163. But by statute 1 W. & M. cap 30, no mine of copper or tin shall be adjudged a royal mine, though silver be extracted. So by statute 5 W. & M. c. 6, persons having mines of copper, tin, lead, &c., shall enjoy the same although claimed to be royal mines. Alum mines belong to the person on whose land they are, 3 Inst. 185; see also, 21 Jac. I. c. 3, ss. 11, 12; see further, Rev. Stat. c. 31. It has been usual in this country for the Crown, when granting lands, to reserve gold and silver mines. Where no such reservation is made, and the mine discovered is not one that can be called a royal mine, the right to the minerals would pass to the owner of the soil. Reservations of gold and silver mines in patents for lands granted in fee simple are rescinded by Rev. Stat. c. 31, s. 4. By sec. 5 of the same Act no reservation of mines is to be inserted in any patent granting lands sold as mining lands. This section, if construed to apply to roads laid out by private individuals, would be an invasion of private rights, without any express provision for compensation. See sec. 483 and notes thereto. Minerals, so far as the municipalities are concerned, are by this section placed on the same footing as growing timber. As to either, the municipal corporation may now pass by-laws for sale. There is good reason why, in the case of standing timber, the removal of which is necessary to the enjoyment of the public easement, such a power should exist. See note *h* to sub-s. 6 of sec. 550. But that reason has no application whatever to the sale of minerals found *under* roads. See *Johns* v. *Beck*, 24 U. C. C. P. 219.

(*n*) See note *d* to sub. s. 1 of sec. 546.

(*o*) The right of the public to the use of the highway as a highway is paramount to any right to remove minerals. The latter right there-

DIVISION V.—POWERS OF COUNTY COUNCILS IN RELATION TO ROADS AND BRIDGES.

Respecting the Closing of Road Allowances. *Sec.* 566 (1).
" *the Opening and altering of Roads.* *Sec.* 566 (2).
" *Trees obstructing Highways.* *Sec.* 566 (3).
" *Double Tracks in Snow Roads.* Sec. 566 (4).
" *Aid to Townships.* *Sec.* 566 (5).
" *Repair of County roads in local Municipalities.* *Sec.* 566 (6, 7).

566. The council of every county shall have power (*a*) to pass by-laws for the following purposes :— By-laws for

Closing Road Allowances.

1. For stopping up, or stopping up and sale, of any original allowance for roads, or parts thereof within the county, (*b*) which is subject to the sole jurisdiction and control of the council, and not being within the limits of any village, town, or city within or adjoining the county ; but the by-law for this purpose shall be subject to section 546 of this Act ; (*c*) Disposing of original allowance for roads in certain cases.

Opening and Altering Roads.

2. For opening, making, preserving, improving, repairing, widening, altering, diverting, and stopping up roads, streets, squares, alleys, lanes, bridges, or other public communications, running or being within one or more townships, or between two or more townships of the county ; or any bridge required to be built or made across any river over 100 feet in width within any incorporated village in the county connecting any public highway leading through the county, and which is in continuation of a county road, or between the county and any adjoining county or city or separated town, or on the bounds of any town or incorporated village within the boundaries of the county, as the interests of the inhabitants of the county, in the opinion of the council, require to be Opening, etc., roads, etc., within or between several municipalities.

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fore must be so exercised as not to interfere with the former. The municipal corporation is liable to be sued by any person sustaining damages by reason of defect in the highway. See notes to sec. 531.

(*a*) See note *x* to sec. 534.

(*b*) See note *m* to sec. 550.

(*c*) *i. e.* as to notice. See sec. 546 and notes thereto.

so opened, made, preserved, and improved; (*d*) and for entering upon, breaking up, taking, or using any land in any way necessary or convenient for the said purposes, subject to the restrictions herein contained; (*e*) 46 V. c. 18, s. 565 (1, 2).

Trees obstructing Highways.

May direct the trees to be cleared on each side of highways.

3. For directing that, on each and either side of a highway under the jurisdiction of the council (*f*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, (*g*) or, in his default, by the county surveyor or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; (*h*) and the council may further pay such expenses out of county funds.

(*d*) See as to these powers generally, note *a* to sub. s. 1, of sec. 550.

(*e*) See note *b* to sec. 550.

(*f*) Powers precisely similar to those by this clause conferred on counties are also conferred on *townships*. Sec. 567, sub-s. 3. This subsection is to be read only as to roads over which county councils have exclusive jurisdiction. So sec. 567, sub-s. 3, is to be read only as to roads vested in the townships. By this construction conflict of jurisdiction is prevented.

(*g*) This authorizes a serious interference with private rights, and yet makes no express provision for compensation. The general rule is that when the property of a private person is interfered with for a public benefit, compensation shall be made. See sec. 483 and notes; see also note *b* to sub-s. 1 of sec. 550. It has been held that the statutory duty of opening a road on which trees grew was no answer to an action for injury caused to the plaintiff's land by the felling of trees, accompanied by the allegation that in so opening the road a portion of the trees on being cut and felled necessarily reached to and fell upon the plaintiff's land, but doing the said land no unnecessary and no material damage. *Rowe* v. *Rochester*, 22 U. C. C. P. 319. See further, *Gilchrist* v. *Garden*, 26 U. C. C. P. 1.

(*h*) If the proprietor himself cut the trees they become his property. They are his property as owner of the land. See note *h* to sec. 550. But if he make default, the by-law may authorize the trees either to be used for municipal purposes or sold to defray the expenses of carrying the by-law into effect. See first part of note *s* to sub-s. 15 of sec. 489. Further expense, if any, is to be paid out of county funds.

Double Tracks in Snow Roads.

4. For providing for the making and keeping open of double tracks in snow roads, according to the provisions of *The Act respecting Double Tracks in Snow Roads*; Double tracks in snow roads. Rev. tat. c. 197.

Aiding Townships, etc.

5. For granting to any town, township, or incorporated village in the county aid, by loan or otherwise, towards opening or making any new road or bridge in the town, township, or village in cases where the council deems the county at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the council in at once assuming the same as a county work, (*k*) and also for guaranteeing the debentures of any municipality within the county, as the council may deem expedient; (*l*) For aiding the making of roads and bridges. Guaranteeing debentures of local municipalities.

Repair of County Roads in local Municipalities.

6. For requiring that the whole or any part of a county road within any local municipality shall be opened, improved and maintained by such local municipality; (*m*) 46 V. c. 18, s. 565 (3-6). Opening roads in local municipalities.

7. For abandoning or otherwise disposing of the whole or any portion of a toll road owned by a county, whether situated wholly within the county or partly within the county and partly within an adjoining county or counties, and on the passing of such by-law the clerk shall forthwith forward a certified copy thereof to the local municipality or municipalities through or along which any portion of said abandoned road shall run or border upon: Provided, however, that no such by-law shall take effect until assented to by the local Disposing of roads.

(*k*) The ordinary powers of a county council, are, so far as roads and bridges are concerned, to deal only with county roads and bridges. See note *k* to sec. 20, and note *b* to sec. 282. As to the jurisdiction of county councils over roads and bridges, see sec. 532.

(*l*) County councils have no power to make grants in aid of the ordinary roads and bridges of particular local municipalities. *In re Strachan and Frontenac*, 41 U. C. Q. B. 175.

(*m*) This enactment was in all probability passed in consequence of the decision in *In re Rose and Stormont*, 22 U. C. Q. B. 531. See note *x* to sec. 534.

municipality or municipalities affected, or until the same shall have been approved by the Lieutenant-Governor in Council. 48 V. c. 39, s. 24; 49 V. c. 37, s. 18.

DIVISION VI.—POWERS OF TOWNSHIP COUNCILS IN RELATION TO ROADS AND BRIDGES.

Aiding Counties. *Sec.* 567 (1).
Closing Road Allowances. *Sec.* 567 (2).
Trees obstructing Highways. *Sec.* 567 (3).
Footpaths. *Sec.* 567 (4).
Sale of Roads in Villages and Hamlets. *Sec.* 568.

By-laws for —

567. The council of every township may (*a*) pass by-laws—

Aiding Counties.

Aiding adjoining county in making roads, etc., and granting aid to county for roads assumed by county.

1. For granting to any adjoining county aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the township and any other municipality, (*b*) and for granting like aid to the county in which the township lies in respect of any highway, road, street, bridge, or communication within the township assumed by the county as a county work, or agreed to be so assumed on condition of such grant; (*c*)

Closing Road Allowances..

Stopping up, leasing or sale of original road allowance.

2. For the stopping up, leasing, or sale of any original allowance for road or any part thereof within the municipality, and for fixing and declaring therein the terms upon which the same is to be leased, sold and conveyed; (*d*)

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But no such by-law shall have any force—

(*a*) "*May* pass by-laws," &c. See note *x* to sec. 534.

(*b*) See note *b* to sec. 546. The description as aid "by loan or otherwise" is not specified here as in sub-s. 5 of sec. 566.

(*c*) The power is not to aid the county in respect of *any* local highway, road, &c., assumed by the county as a county work, but only in the case of a highway, &c., assumed "on condition of such grant;" in other words, when the promise to make the grant was one of the inducements to the county to assume the work, and, as it were, the condition on which it was assumed.

(*d*) See note *a* to sec. 550.

(*a*) Unless passed in accordance with section 546 of this Act, (*e*) nor

(*b*) Until confirmed by a by-law of the council of the county in which the township is situate, at an ordinary session of the county council, held not sooner than three months nor later than one year next after the passing thereof; (*f*)

Trees obstructing Highways.

Ordering trees to be cut down on each side of a road.

3. For directing that, on each or either side of a highway under the jurisdiction of the council (*g*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the by-law, (*h*) or, on his default, by the overseer of highways, or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the by-law into effect; (*i*) and the council may grant out of township funds any money that may be necessary to pay for cutting down and removing such trees;

(*e*) See sec. 546 and notes.

(*f*) The by-law of the township is not to have any force until confirmed in the manner and at the time mentioned. If not confirmed at all, or if confirmed at the session of the council other than the one specified, it would be, for all purposes, inoperative. If not legally confirmed, it would not affect any persons interest. If confirmed by a by-law of the county council, and illegal, it may be moved against. It would, it seems, be premature to move against the by-law of the township before confirmation by the county council. *In re Choate and Hope*, 16 U. C. Q. B. 424, 428. The statute 20 Vict. c. 69, required such a by-law to be confirmed by the county council within a year from the passing of the by-law. Before confirmation, the 20 Vict, c. 69 was repealed by statute 22 Vict. c. 99, saving all things done thereunder, and by it no confirmation of such a by-law was made requisite. The court intimated that the confirmation of the by-law was still necessary to its validity. *Winter* v. *Keown*, 22 U. C. Q. B. 341.

(*g*) See note *f* to sub. 3 of sec. 566.

(*h*) See note *g* to sub-s. 3, of sec. 566.

(*i*) See note *h* to sub-s. 3 of sec. 566.

Footpaths.

Footpaths.

4. For setting apart so much of any highway as the council may deem necessary for the purposes of a foot path, (*k*) and for imposing penalties on persons travelling thereon on horseback or in vehicles. 46 V. c. 18, s. 566.

Sale of Roads in Villages or Hamlets.

When roads in police villages and certain hamlets may be stopped up, sold, etc., by township council.

568—(1) In case the trustees of any police village, or fifteen of the inhabitant householders of any other unincorporated village or hamlet consisting of not less than twenty dwelling houses standing within an area of 200 acres, petition the council of the township in which the village or hamlet is situate, and in case the petition of such unincorporated village or hamlet, not being a police village, is accompanied by a certificate from the registrar of the registry division within which the township lies, that a plan of the village, or hamlet has been duly deposited in his office according to the registry laws, the council may (*l*) pass a by-law to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the village or hamlet, as the same shall be laid down on the plan, but subject to all the restrictions contained in this Act with reference to the sale of original allowances. (*m*)

When village is partly in each of two townships.

(2) The preceding sub-sections shall apply to a village or hamlet situate in two townships, whether such townships are in the same or different counties, (*n*) and in such case

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(*k*) Footpaths or side walks constitute a portion of a highway proper for the use of pedestrians, and necessary to be kept in repair by the municipal corporation. See notes to sec. 531. It is apprehended that corporations of townships, like other local municipal corporations, would have an implied power to do all that is here authorized.

(*l*) *May*—permissive. See note *x* to sec. 534.

(*m*) See sec. 550, sub-s. 9.

(*n*) The last subsection in terms applies only to a village or hamlet situate in one and the same township as well as in one and the same county but as villages are often formed at the corners of different townships, which may or may not be in different counties, it is by this subsection made to extend to "a village or hamlet situate in *two* townships, whether such townships are in the same county or in different counties." The extension is scarcely sufficient for there are villages formed of parts of *more* than two townships.

the council of each of the townships shall have the power thereby conferred, (*o*) as to any original allowance for road lying within that part of the village or hamlet which, according to the registered plan, is situate within such township. 46 V. c. 18, ss. 568, 569.

TITLE III.—POWERS OF MUNICIPAL COUNCILS AS TO DRAINAGE AND OTHER IMPROVEMENTS PAID FOR BY LOCAL RATE.

DIV. I.—TOWNSHIPS, CITIES, TOWNS AND VILLAGES.
DIV. II.—TOWNSHIPS AND VILLAGES.
DIV. III.—COUNTIES.

DIVISION I.—LOCAL IMPROVEMENTS IN TOWNSHIPS, CITIES, TOWNS, AND VILLAGES.

Local drainage by-laws, and fund for. *Secs.* 569, 570.
Complaints respecting assessments, how tried. *Sec.* 569 (10-15).
Quashing by-laws, limitations respecting. *Secs.* 571-574.
Extension of works to other Municipalities. *Sec.* 575.
Mode of apportioning cost. *Secs.* 576-582.
Who to keep in repair. *Secs.* 583-590.
Damage done by works. *Secs.* 591, 592.
Drainage by private persons. *Sec.* 593.
Earth, etc., may be spread on road. *Sec.* 594.
Part of cost payable by Municipality. *Sec.* 595.
Construction of ditch on town line between two Municipalities. *Secs.* 596, 597.
Construction of works affecting several Municipalities in same County. *Secs.* 598, 599.
Construction of works affecting several Municipalities in different Counties—Procedure. *Secs.* 600-611.
Cost of local improvements. *Secs.* 612-628.
Sweeping, watering and lighting streets. *Sec.* 629.

Drainage Works.

569. In case the majority in number of the persons, as shewn by the last revised assessment roll, to be the owners (whether resident or non-resident) of the property to be

Municipal councils may pass by-laws for deepening

(*o*) See note *x* to sec. 534.

streams, etc. drainage, etc.

benefited in any part of any township, city, town, or incorporated village, petition the council for the deepening or straightening of any stream, creek, or water-course, or for draining of the property (describing it), (*a*) or for the removal of any obstruction which prevents the free flow of the waters of any stream, creek, or water-course as aforesaid, or for the lowering of the waters of any lake or pond for the purpose of reclaiming flooded land or more easily draining any lands, the council may procure an engineer or provincial land surveyor to make an examination of the stream, creek, or water-course proposed to be deepened or straightened, or from which it is proposed to remove obstructions, or of the lake or pond the waters of which it is proposed to lower, or of the locality proposed to be drained, and may procure plans and estimates to be made of the work by such engineer or surveyor, and an assessment to be made by such engineer or surveyor of the real property to be benefited by such work, stating as nearly as may be, in the opinion of such engineer or surveyor, the proportion of benefit to be derived therefrom by every road and lot, or portion of lot; (*b*) and if the council is of opinion that the proposed

Examination by engineer.

Plans and estimates.

(*a*) Municipal corporations are not responsible in damages for the legitimate exercise of the powers conferred on them as to drainage. *Darby* v. *Crowland*, 38 U. C. Q. B. 338. It has not yet been decided *what majority* is sufficient to procure the action of the council. "Four concessions in a township may be interested in different degrees in a work which would drain all the lands in those concessions; but it might be of more importance to the owners of the lands in *one* of those concessions than to all the owners of the lands in the other three to procure the construction of the work. As at present advised, we do not see that a majority of the resident owners in the one concession would not comply with the terms of the Act." *In re Montgomery and Raleigh*, 21 U. C. C. P. 381, 395. The petition should include a majority of all the persons whom the engineer finds to be benefited by the proposed work. *In re Robertson and North Easthope*, 15 O. R. 423. The objection that the petition was not signed by the requisite majority is not one that can be entertained by the court on an application to quash the by-law; at all events, in the absence of fraud or corrupt conduct on the part of those who passed the by-law. *In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. See also *In re Robertson and North Easthope*, 15 O. R. 423.

(*b*) On receipt of the requisite petition, the council may, in its discretion, refuse to proceed further. See note *x* to sec. 534. The council has no power to alter the works which the petitioners ask for and change into something they do not ask for without their express concurrence. If the work asked for is impracticable or too costly the petition should be refused. *Re Misener* v. *Township of Wain-*

work or a portion thereof, would be desirable, the council may pass by-laws—(*c*)

1. For providing for the proposed work or a portion thereof being done as the case may be. (*d*) 46 V. c. 18, s. 570 (1); For deepening streams, etc.

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fleet, 46 U. C. Q. B. 457. The petitioners, or any one or more of them, upon the report of the engineer or surveyor may withdraw from the petition, the preliminary examination, estimate, assessment and value of supposed benefit being made to enable the parties to determine whether they will proceed with the proposed work or not. *Ib*; *In re Robertson and North Easthope*, 15 O. R. 423. Persons who have not signed the petition and whose land has not been mentioned therein may be assessed if the surveyor reports that their land would be benefited by the work. *In re White and Sandwich East*, 1 O. R. 530. The engineer may leave out of his scheme portions of the land mentioned in the petition, and the calculations as to the necessary majority should be made without considering the owners of such land. *In re Robertson and North Easthope*, 15 O. R. 423. The contention that *all* the lands which will be benefited by the proposed work have not been assessed, or that for any other reason the several assessments made upon the respective lots, or any of them are overcharges, does not constitute ground for moving to quash the by-law. All those matters are matters subject to appeal, and it is there such a contention should be tried and investigated. *In re Montgomery and Raleigh*, 21 U. C. C. P. 393. See also *In re White and Sandwich East*, 1 O. R. 530; *Re Clarke and Howard*, 14 O. R. 598.

(*c*) The council is left, upon receipt of the engineer's report and other preliminaries, to judge whether or not "the proposed work or a portion thereof would be desirable," &c. If its opinion be in the affirmative, it may pass the by-law; but if of a negative opinion, there is no power to compel the council to do so. See note *x* to sec. 534. The engineer is the proper party to make the assessment. *Re McLean and the Township of Ops*, 45 U. C. Q. B. 325. Where on the petition of the plaintiff and others a by-law was passed for the construction of the B drain and the assessment of the land benefited, but the drain had not been completed though a reasonable time had elapsed and a portion of the moneys assessed had been applied upon another drain not mentioned in the petition, the report of the surveyors, or in the by-law, and of no value to the petitioners, it was held that the plaintiff was entitled to an order compelling the corporation to complete the B drain according to the by-law, to an injunction to restrain further misapplication of the moneys assessed and to an account thereof, for that the by-law created a trust which had been violated. *Smith* v. *Township of Raleigh*, 3 O. R. 405.

(*d*) The purposes for which such a by-law may be passed are for the deepening or straightening of any stream, creek or water-course, or the draining of the locality. The effect of deepening a particular stream, creek or water-course may be more effectually to drain the locality; but there may be localities requiring drainage in the immediate vicinity of which there is no stream, creek or water-course. In either event it is contemplated that a by-law may be asked and passed. See note *h* to sub-s. 16 of sec. 521, as to streams and watercourses.

For borrowing requisite funds, etc.

2. For borrowing on the credit of the municipality the funds necessary for the work, although the same extends beyond the limits of the municipality (subject in that case to be reimbursed as hereinafter mentioned), and for issuing the debentures of the municipality to the requisite amount, including the costs of arbitration, if any, in sums of not less than $100 each, and payable within twenty years from date, with interest at a rate of not less than four per centum per annum ; (*e*)

Payment of interest on debentures how made.

(*a*) Any council issuing debentures under the provisions of this section, may include the interest on the debentures in the amount payable, in lieu of the interest being payable annually in respect of each debenture, and any by-law authorizing the issue of debentures for a certain amount and interest, shall be taken to authorize the issue of debentures, in accordance with this sub-section to the same amount with interest added, if the council, by subsequent resolution, direct the treasurer to issue debentures in accordance with this section, as aforesaid. 46 V. c. 18, s. 570 (2); 49 V. c. 37, s. 20; 50 V. c. 6, s. 1.

(*e*) The amount borrowed is to be payable within twenty years from the date of the by-law, and yet no provision is made for requiring the by-law on the face of it to show the date of its passing. It is necessary to the validity of an ordinary by-law to raise money on the credit of the municipality. that it should name a day in the financial year in which the same is passed when the by-law shall take effect. Sec. 340, sub-s. 1. This section, however, does not require that such a day should be named in the by-law. *Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 397. But even in the case of an ordinary money by-law, the Court refused, after the issue of debentures, to quash the by-law on the ground of the omission. In *In re Michie and Toronto*, 11 U. C. C. P. 379, Draper, C. J., said—"I have felt a good deal of doubt whether the Legislature did not intend that in the body of every by-law shall be stated a day upon which it is to take effect. The date on which a by-law is passed does not necessarily form a part thereof, though it may be the practice for some officer of the corporation to mark the day of its passing thereupon. And I think the Legislature meant that it should not be necessary to refer to anything extrinsic to the by-law, for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the by-law under which it was issued were legal, and might on that account require to see when the by-law took effect." See also sub-s. 2 of s. 621, which requires that every by-law for borrowing money shall provide for the repayment of the loan and the maturing of debentures to be issued pursuant to the by-law within the probable life of the work or improvement for which the debt is incurred.

3. For assessing and levying in the same manner as taxes are levied, upon the real property to be benefited by the work, a special rate sufficient for the payment of the principal and interest of the debentures, and for so assessing and levying the same, as other taxes are levied, by an assessment and rate on the real property so benefited (including roads held by joint stock companies or private individuals and ncluding roads held by counties or county councils,) in proportion as nearly as may be to the benefit derived by each lot or portion of lot and road in the locality; (*f*) 46 V. c. 18, s. 570 (3 part); 51 V. c. 28, s. 35. Levying rate or payment.

(*f*) A by-law enacted that the drain should be made in accordance with the survey and levels taken by the engineer: that there should be raised, levied and collected off the lots and parts of lots in the township to be benefited by making such drain, the sum of $2696; that the sum of $2696 should be divided into three equal annual payments, bearing interest at the rate of eight per cent. per annum, first payment to be made in 1871, and to continue in each year till the whole should be paid, for the purpose of paying one part of the cost of said drainage, and the cost incidental thereto assessed upon the lands aforesaid; and the collector should in each year place the same upon the collector's roll against each lot or part of lot "as set forth in the annexed schedule," to be collected and paid over to the treasurer, as other taxes were collected and paid over, to form a sinking fund to meet the payment of debentures. It then provided for payment by the treasurer of the municipality of the sum of $306, assessed on roads and road allowances; and then for the issue of debentures for $2696, at a rate of interest not exceeding eight per cent. per annum, in sums of not less than $100 each, payable in three years from the 15th December, 1870: and, lastly, that if the amount to be collected from such assessment should, by reason of the lands being non-resident, or otherwise, fall short of the sum required to meet the debentures or interest as they became due, the treasurer should pay such deficiency out of the general funds, and reimburse those funds when the assessment should be levied out of the land. The schedule, which was annexed to and formed part of the by-law, was entitled "Schedule shewing the benefits to be derived by each lot from the drainage to be performed under this by-law." The objection raised against the by-law was, that it did not properly provide for a special rate sufficient to include a sinking fund for the payment of the debentures therein mentioned, but provided for the levying and raising of certain instalments with interest, and did not state or provide from what date such interest was to be charged. But the by-law was sustained as against the objection. *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. "Upon a careful consideration of the section, we do think the objection is not insurmountable." *Per* Gwynne, J., *Ib.* 395. The learned Judge, after using the language quoted, and after making a critical examination of the section, leading to a particular construction, which is too long for insertion, concluded, "This section of the by-law is, we think, open to this construction, and being so construed seems to be

What cost to be deemed cost of works.

(a) The cost of any arbitration held in connection with the construction of any works under this section, the cost of the publication of by-laws, and all other expenses incidental to the construction of the works and the passing of the by-laws shall be deemed part of the cost of such works, and included in the amount to be raised by local rate.

Proviso.

(b) Any person whose property has been assessed for such work may pay the amount of such assessment, less the interest, at any time before the debentures are issued, in which case the amount of debentures shall be proportionably reduced; (g) and

Proviso

(c) Any agreement on the part of any tenant to pay the rates or taxes of the demised property shall not apply to or include the charges or assessments for any works under this section, unless such agreement in express terms mentions or refers to such charges or assessments, and as payable in respect of drainage works; but in cases of contracts of purchase or of leases giving the lessee a right of purchase, the said charges or assessments shall be added to the price, and shall be paid (as the case may be) by the purchaser, or by the lessee in case he exercises such right of purchase; (h)

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free from the objection taken." Notwithstanding, it is recommended that such a by-law be not made a precedent. It is inserted, not as a guide, but as a warning. The Legislature has wisely provided a form of by-law which shall (*mutatis mutandis*) be used. See sec. 570

(g) This is, in effect, an authority for the payment of a debt in advance; and as an inducement there is a rebate of interest. But it is to be observed that the privilege can only be exercised "before the debentures are issued." After the issue of the debentures the debt for the whole amount is contracted, and it rests with the purchaser, who thereby becomes the creditor of the municipality, to say whether he will accept payment of any of the debentures before maturity, and if so, on what terms as to rebate of interest or otherwise. See further, sub-s. 6 of s. 612, which authorizes municipalities to pass by-laws arranging the terms on which persons assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof.

(h) The purpose of the by-law is to improve the freehold. The money to be raised is not so much a tax as the consideration for the improved drainage. This being so, the obligation to pay is thrown upon the owner of the freehold, and not upon the tenant who has merely covenanted or agreed in the ordinary form to pay taxes. One exception, however, is where by the lease, he has expressly agreed to

4. For regulating the times and manner in which the assessment shall be paid; For providing how assessment be paid.

5. For determining what real property will be benefited by the works, and the proportion in which the assessment should be made on the various portions of lands so benefited, (*i*) and subject in every case of complaint, by the owner or person interested in any property assessed, whether of overcharge or undercharge of any other property assessed, or that property which should be assessed has been wrongfully omitted to be assessed, (*j*) to proceedings for trial of such complaint and appeal therefrom, in like manner, as nearly as may be, as on proceedings for the trial of complaints to the Court of Revision under *The Assessment Act.* For ascertaining the property liable to the rate. Rev. Stat. c. 193, ss. 64, 65.

6. The engineer or surveyor in assessing the real property to be benefited by any works to be executed under this section, need not confine his assessment to the part of a lot actually drained, but, in order that the portion to be rated may be conveniently ascertained, may make such assessment on the whole lot, or on the half, quarter, or other described part of the lot, if the person owning the part actually drained owns the whole lot, or owns such half, quarter, or other described part of the lot; Mode of assessing property.

7. The proportion of benefit to be derived from any works, by different parcels of land or roads may be shewn by the engineer or surveyor by placing sums of money How proportion of benefit may be shewn.

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pay charges in respect to drainage works. Another is, where the lease contains a contract of purchase, in which case such charges shall be added to the price. If it were not for this express exemption, it might be held that ordinary tenants under a covenant to pay taxes would be bound to pay the drainage rate. See *In re Michie and Toronto*, 11 U. C. C. P. 379.

(*i*) It was held not to be necessary for the by-law to specify the *mode* of ascertaining and determining the property to be benefited. *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. Held also, that a schedule annexed to the by-law, shewing the benefit to be derived by each lot from the drainage to be performed under the by-law, which schedule was declared to be part of the by-law, sufficiently indicated that the lands so assessed were assessed as the only lands within the municipality regarded as benefited by the proposed work. See note *f* to sub-s. 3 of this section.

(*j*) See notes to secs. 64 to 75, of the Assessment Act. Where the council while professing to adopt the engineer's assessment practically threw it aside and unfairly discriminated against some lands and in favour of others, it was held that the by-law could not be sustained. *Re Clark and the Township of Howard*, 14 O. R. 598.

opposite such parcels and roads, and it shall not be deemed to have been necessary to state the fraction of the cost to be borne by each parcel or road ;

Petition for draining lands by embanking, etc.

8. The council shall have the like power, and the provisions of this section shall apply in cases where the work can be effectually accomplished only by embanking, pumping, or other mechanical operations, but in such cases the council shall not proceed except upon the petition of two-thirds of the owners above mentioned in this section. (*k*) 46 V. c. 18, s. 570 (3, part, 4-8).

Injury to low lying land.

9. In cases provided for in the next preceding sub-section, the council may pass by-laws for assessing and defraying the annual cost of maintaining the necessary works upon the lands and roads to be benefited thereby, according to the provisions of this Act ; and may do all things necessary, and pass all requisite and proper by-laws, and enter into all proper contracts for maintaining and giving full effect to said works ; and all the provisions of this and the following sections to section 632 inclusive, shall be applicable, so far as possible to the draining of lands under subsection 8 of this section ; except that the council of the municipality may on the petition of two-thirds of the owners appearing by the last revised assessment roll to be assessed for work mentioned in said sub-section, pass a by-law relieving the municipality from all liability under the provisions of section 586 ; and after such last mentioned by-law shall have been passed, the provisions of said section 586 shall not apply to any of the works mentioned in said sub-section and set forth and designated in said last mentioned by-law; 46 V. c. 18, s. 570 (9) ; 49 V. c. 37, s. 21.

Section 586, only to apply during the will of the council.

Court of Revision to have primary jurisdiction.

10. Trial of such complaints shall be had in the first instance by and before the Court of Revision of the municipality in which the lands or roads lie, which court the council shall, from time to time as the occasion may require, hold on some day not earlier than twenty nor later than thirty days from the day on which the by-law was first pub-

(*k*) See the first part of this section which provides for a petition by the majority of the owners interested. The words "mechanical operations" must not be read in their widest sense ; the provisions requiring a two-thirds majority are not intended to apply to every case in which it may become necessary to build or heighten a bank at the side of a drain or to strengthen it in places by the adoption of timber or logs. *In re Robertson* v. *North Easthope*, 15 O. R. 423.

lished, notice of which shall be published with the by-law during the first three weeks of its publication; (*l*) and all notices of appeal shall be served upon the clerk of the municipality at least eight days prior to such Court of Revision; but the Court of Revision may though such notice be not given permit the appeal to be heard on such conditions as to giving notice to all persons interested and otherwise as may seem just; 46 V. c. 18, s. 570 (10); 50 V. c. 29, s. 38.

Power of. Rev. Stat. c. 193, ss. 55 63.

11. Such Court shall be constituted in the same manner and have the same power as Courts of Revision under *The Assessment Act*; (*m*)

Transmission of assessment roll.

12. In case of any such complaint, the clerk with whom the roll is deposited shall transmit to the Court of Revision a certified copy of so much of the said roll as relates to such municipality;

Appeal to county judge.

13. The appeal from the Court of Revision shall be to the Judge, or junior or acting Judge, of the County Court of the county within which such municipality is situate;

(*l*) The omission of the notice as to the Court of Revision from the by-law as published is fatal. *In re Ferguson and the Township of Howick*, 44 U. C. Q. B. 41. In the case of *In re Montgomery and Raleigh*, 21 U. C. C. P. 393, decided under the provisions of 32 Vict. c. 43, Gwynne, J., said: "The object of the Act, as it appears to me, is, to make the appeal to the council, if not appealed from to the County Judge, and the decision of the County Court Judge, if the appeal should be carried to him, as final and conclusive as the decision of the Court of Revision and of the County Court Judge respectively are under the Assessment Act, . . . Such a mode of decision upon the several matters being provided by the Act, seems to conclude the idea that these matters can be opened upon a motion to quash the by-law," See also *Re White and Sandwich East*, 1 O. R. 530. The appeal is now before the Court of Revision, the decision of which may be appealed from to the Judge or junior or acting Judge of the county in which such municipality is situate. Sub-s. 13. When the engineer who made the assessment was not notified and was not present at the Court of Revision but was present on the appeals therefrom to the County Judge which were taken by all who had appealed to the Court of Revision held not a ground for setting aside the by-law. *Re McLean and Ops*, 45 U. C. Q. B. 325. Matters of which complaint might be made to the Court of Revision form no ground for quashing a by-law. *Ib.* No interest can disqualify a councillor or a member of a Court of Revision from performing his duties as such that springs solely from his being a ratepayer in the municipality. *Ib.* See also *Canadian Land and Emigration Co.* v. *Dysart*, 12 A. R. 80.

(*m*) See notes to secs. 55 to 63, inclusive, of the Assessment Act.

Powers of judge on appeal.

14. In case of appeal to the Judge, junior or acting Judge of the County Court, he shall have the same powers and duties, and the clerk of the municipality shall have the same powers and duties, as nearly as may be, as they have respectively upon appeals from the Court of Revision under *The Assessment Act*; (*n*)

Rev. Stat. c. 193, ss. 68-74.

Variations in assessment on complaint or appeal.

15. In case, on any such complaint or appeal, the assessment is varied in respect of the property which is the subject of the complaint or appeal, the Court or Judge, as the case may be, shall vary *pro rata* the assessment of the said property, and of the other lands and roads benefited as aforesaid, without further notice to the persons interested therein, so that the aggregate amount assessed shall be the same as if there had been no appeal, (*o*) and the Judge, or in case there is no appeal to the Judge, the Court of Revision shall return the roll to the municipal clerk from whom it was received, and the assessors shall prepare and attest a roll in accordance with their original assessment as altered by such revision;

Works to which this section applies.

16. The provisions of this section shall be deemed to extend to the re-execution or completion of any works which have been executed or have been partly or insufficiently executed under any provision of any Act of this Legislature, or of the Parliament of the Province of Canada, and to any works which it may be deemed expedient to dig, construct, or make for the purposes aforesaid, or any of them, provided that the stream, lake, or pond is, for the purposes hereof, within the jurisdiction of this Legislature; 46 V. c. 18, s. 570 (11-16).

Appointment of commissioners to carry out drainage works.

17. In order the better to maintain and operate works constructed under the provisions of sub-section 8 of this section, the council may pass by-laws appointing one or more commissioners from among those whose lands are assessed for the construction of such works, and the commissioners so

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(*n*) See notes to secs. 68 to 75, inclusive, of the Assessment Act.

(*o*) On an appeal to the County Judge he reduced the assessment on one lot by one-half, the owner consenting, though according to the evidence the sum should have been further reduced. In distributing the amounts struck off among the other properties the Judge added nothing to the assessment of this lot so fixed by consent, but he certified that the other owners were assessed for less than they would have been but for such consent: Held, that this sub-section had been practically complied with. *Re McLean and the Township of Ops*, 45 U. C. Q. B. 325.

appointed shall have full power to enter into all such necessary and proper contracts for the purchase of fuel, repairs of buildings and machinery, and may do all other things necessary to facilitate the successful operation of such works as may be set forth in the by-law appointing such commissioners; 48 V. c. 39, s. 25.

Provision where obstruction is situate outside of municipality.

18. Where any obstruction, within the meaning of the provisions of this section, is wholly situate or existing beyond the limits of the municipality, the same shall, for all purposes, and with respect to every provision of this Act, be deemed and taken to be an obstruction situate and existing partly within and partly without the limits of the municipality, and as if the proposed work or operations in connection therewith, or with the removal thereof, were to be done and performed in part within the limits of the municipality, and in part to be continued and extended beyond such limits, and all the provisions of this Act shall be held and deemed to apply and operate accordingly; (*p*)

Removal of artificial structures.

19. Where such obstruction is occasioned by or is a dam or other artificial structure, the council shall be deemed to have full power to acquire, with the consent of the owner thereof, and upon payment of such purchase money as may be mutually agreed upon, the right and title to remove the same, wholly or in part; and any amount so paid or payable as purchase money, shall be deemed part of the cost of the works under this section in connection with the removal of such obstruction, and shall be dealt with and provided for accordingly;

Application of sub-ss. 18 and 19.

20. The two preceding sub-sections are to be taken as applying only to cases where the obstruction is actually situate or existing in a municipality next adjoining to the municipality mentioned in such sub-sections; 49 V. c. 37, s. 22.

Removal of obstructions in rivers.

21. To remove doubts it is hereby declared and enacted that where the obstruction referred to in this section is occasioned by, or is a dam or other artificial structure, and is situate wholly within the municipality, the council shall be deemed to have full power to acquire, with the consent of the owner thereof, and upon payment of such purchase money as may be mutually agreed upon, the right to

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See also sec. 522.

remove the same, wholly or in part; and any amount so paid or payable as purchase money, shall be deemed part of the costs of the works under this section in connection with the removal of such obstruction, and shall be dealt with and provided for accordingly, and where the lands benefited are situated partly in the said municipality and partly in the next adjoining municipality, the special rate sufficient for the payment of the principal and interest of the debentures and the assessment and levying of the same shall be made, levied, and paid over by the said municipality, and the said next adjoining municipality, in such proportions as the said engineer or surveyor may determine and charge upon the lands aforesaid, and in like manner and to the same extent, as nearly as may be, as is provided for by this Act where the lands benefited are situated wholly within the municipality. 50 V. c. 29, s. 54.

Form of by-law.

570—(1) The by-law shall, *mutatis mutandis*, be in the form or to the effect following: (*q*)

A BY-LAW to provide for draining parts of (*or*, for the deepening of in, *or as the case may be*) the Township of , and for borrowing on the credit of the municipality, the sum of for completing the same (*r*)

Provisionally adopted the day of , A.D. (*s*)

Whereas a majority in number of the owners, as shown by the last revised assessment roll, of the property hereinafter set forth, to be benefited by the drainage (*or* deepening, *or as the case may be*), have petitioned the council of the said township of , praying that (*t*) (*here set out the purport of the petition, describing generally the property to be benefited,*) (*u*)

And whereas, thereupon the said council procured an examination to be made by , being a person competent for such purpose, of the said locality proposed to be drained (*or* the said stream, creek or water-course proposed to be deepened, *or as the case may*

(*q*) The words are *shall* be (not *may* be) in the *form* or to the *effect* following. See note *r* to sec. 330.

(*r*) See note *d* to sub. 1 of sec. 569.

(*s*) See note *e* to sub. 2 of sec. 569.

(*t*) See note *t* to sub. 6 of sec. 340.

(*u*) See note *a* to sec. 569. Where a by-law was passed by one township for the drainage of lands therein and in an adjoining township and assessing property owners in both townships, it was held that the by-law was invalid because the petition therefor did not describe the property to be benefited and the by-law itself which did shew the property to be benefited disclosed that the petitioners were not the majority of the owners of the property. *Re Romney and Mersea*, 11 A. R. 712.

be), and has also procured plans and estimates of the work to be made by the said , and an assessment to be made by him of the real property to be benefited by such drainage (*or* deepening, *or as the case may be*), stating, as nearly as he can, the proportion of benefit which, in his opinion, will be derived in consequence of such drainage (*or* deepening, *or as the case may be*), by every road and lot or portion of lot, the said assessment so made, being the assessment hereinafter by this by-law enacted to be assessed and levied upon the lots and parts of lots hereinafter in that behalf specially set forth and described, and the report of the said in respect thereof, and of the said drainage (*or* deepening, *or as the case may be*) being as follows: (*here set out the report of the engineer or surveyor employed.*) (*v*)

And whereas the said council are of opinion that the drainage of the locality described (*or*, the deepening of such stream, creek or water-course, *or as the case may be*) is desirable: (*w*)

Be it therefore enacted by the said municipal council of the said township of , pursuant to the provisions of *The Municipal Act.*

1st. That the said report, plans and estimates be adopted, and the said drain (*or* deepening, *or as the case may be*) and the works connected therewith be made and constructed in accordance therewith.

2nd. That the reeve of the said township may borrow on the credit of the corporation of the said township of (*x*) the sum of , being the funds necessary for the work, and may issue debentures of the corporation to that amount, in sums of not less than $100 each, and payable within years from the date thereof, with interest at the rate of per centum per annum, that is to say, in (*insert the manner of payment whether in annual payments or otherwise*), such debentures to be payable at , and to have attached to them coupons for the payment of interest. (*y*)

3rd. That for the purpose of paying the sum of $475, being the amount charged against the said lands so to be benefited as aforesaid, other than lands (*or* roads, *or* lands and roads) belonging to the municipality, and to cover interest thereon for *ten* years, at the rate of (*five*) per cent. per annum, the following special rates, over and above all other rates, shall be assessed and levied (in the same manner and at the same time as taxes are levied) upon the undermentioned lots and parts of lots; and the amount of the said special rates and interest assessed as aforesaid against each lot or part of lot respectively shall be divided into equal parts, and one such part shall be assessed and levied as aforesaid, in each year, for years after the final passing of this by-law, during which the said debentures have to run. (*z*)

(*v*) See note *b* to sec. 569.

(*w*) See note *c* to sec. 569.

(*x*) See note *e* to sub. 2 of sec. 569.

(*y*) See sub. 6 of sec. 340 and notes thereto.

(*z*) See note *f* to sub. 3 of sec. 569.

Concession.	Lot or Part of lot.	Acres.	Value of Improvement.	To cover Interest for (10) years at (5) per cent.	Total Special Rate.	Annual Assessment during each year for (10) years.
			$ cts.			
10	5	200	75 00			
"	S ½ 6	100	50 00			
"	N ½ 6	50	30 00			
"	S W ¼ 8	100	80 00			
"	9	200	150 00			
"	S ½ and N ½ 10	150	90 00			
			475 00			
Chargeable to Municipality for roads (*or* lands, *or* roads and lands)			120 00			
			595 00			

4th. For the purpose of paying the sum of $120, being the total amount assessed as aforesaid against the said roads (*or* lands, *or* roads and lands) of the said municipality, and to cover interest thereon for (*ten*) years at the rate of (*five*) per cent. per annum, a special rate of in the dollar shall, over and above all other rates, be levied (in the same manner and at the same time as taxes are levied) upon the whole ratable property in the said Township of in each year for the period of years, after the date of the final passing this by-law, during which the said debentures have to run.

Amendment of by-law.

(2) In the event of the assessment being altered by the

Court of Revision or Judge, the by-law shall, before being finally passed, be amended so as to correspond with such alteration, by the Court of Revision or Judge (as the case may be). (*a*) 46 V. c. 18, s. 571; 49 V. c. 37, s. 24.

Provision where by-law passed before appeal determined.

(3) In case the council shall finally pass the by-law before the time for appealing to the Judge has expired, or while an appeal is pending before him, the Judge shall, notwithstanding such by-law has been passed, proceed and determine the appeal; and if he varies the assessment, the council shall by an amending by-law alter the by-law in accordance with the variation in the assessment made by the Judge. 49 V. c. 37, s. 23.

Publication of drainage by-laws.

571—(1) Before the final passing of the by-law it shall be published once or oftener in every week for four weeks in such newspaper published either within the municipality or in the county town, or in a public newspaper published in an adjoining local municipality, as the council may designate by resolution, (*b*) together with a notice that any one intending to apply to have the by-law, or any part thereof, quashed must, not later than ten days after the final passing thereof, serve a notice in writing upon the reeve or other head officer, and upon the clerk of the municipality, of his intention to make application for that purpose to the High Court at Toronto, during the six weeks next ensuing the final passing of the by-law. (*c*) 46 V. c. 18, s. 572 (1); 49 V. c. 37, s. 25.

(*a*) Where the assessments were altered but the by-law was not amended before being finally passed, and it was impossible to discover from the alterations as made the total amount of the special rate against each lot or part of lot, and therefore the amount to be annually levied, the defect was held fatal. *Re Funston and Tilbury East*, 11 O. R. 74.

(*b*) A proposed township by-law relating to drainage was published in a newspaper in a large town, and for all other than municipal and judicial business practically the county town and situate two miles from the county town. There was no newspaper published in the township, or in the county town, or in the next adjoining municipality; but there were newspapers published in several small villages somewhat nearer to the township than the town, but their circulation was much smaller in the township than that of the town paper: Held, that the publication was sufficient. *Re Gallerno and the Township of Rochester*, 46 U. C. Q. B. 279. Non-publication of the notice required by this section is not fatal to the validity of a by-law. *In re Ferguson and the Township of Howick*, 44 U. C. Q. B. 41.

(*c*) This is more than is required in the case of quashing any other

By-law may be served on property owners, instead of published.

(2) The council may, at their option, instead of such publication in a newspaper, direct by resolution that a copy of the by-law and notice, written or printed, or partly written and partly printed, be served upon each of the several owners, their lessees or occupants, or upon the agent or agents of such owners, or be left at their places of residence with some grown up member of the family, or where the land is unoccupied and the owner or owners, or their agent or agents, do not reside within the municipality, may cause to be sent by registered letter to the last known address of such owner or owners, a copy of the by-law and notice, and the by-law shall not be finally passed until after the expiration of three weeks from the last of such services, and the clerk shall keep on file in his office a statutory declaration or declarations by the party or parties making the service or services, and the manner in which the same were effected. 46 V. c. 18, s. 572 (2). *See* sec. 622.

If no application to quash made in time specified, by-law to be valid, notwithstanding defects.

572.—(1) In case no notice of the intention to make application to quash a by-law is served within the time limited for that purpose in the preceding section, or if the notice is served then in case the application is not made or is unsuccessful, the by-law shall, notwithstanding any want of substance or form, either in the by-law itself or in the time and manner of passing the same, be a valid by-law. (*d*)

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description of by-law. All that is in general necessary is that the application to quash should be made within one year after the passing of the by-law. See. 333. In the case of a by-law promulgated, or registered no application can be entertained after the expiration of three months from the promulgation or registration. Sees. 334, 352. The omission from the notice of the words "during the six weeks next ensuing the publication of the by-law" does not render the by-law invalid. *Re McLean and Ops*, 45 U. C. Q. B. 325. Where a by-law, as finally passed, differs from that published only in respect of changes made in the assessment by the Court of Revision and by the County Judge, it is not necessary to publish the by-law again after such changes. *Ib.* Applicants to quash a by-law having followed in their application the notice given by the council should not be prejudiced because that notice was incorrect. *In re Robertson and North Easthope*, 15 O. R. 423.

(*d*) In the case of an ordinary by-law, if the application to quash be not made within the time in that behalf limited, see note *c* to sec. 571, the court will not entertain it. But the validity of the by-law is subject to be incidentally questioned in any action or proceeding that may afterwards arise in reference to it. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. Here it is provided that if no notice be served within the time limited, the by law shall, notwithstanding "any want of *substance* or *form*, either in the by-law itself or in the time

(2) Where the application is made, and is successful in part, so much of the by law as is not quashed upon the application shall be valid, notwithstanding any want of substance or form aforesaid. 46 V. c. 18, s. 573.

Power to amend by-law when no sufficient means provided for completion of the work.

573.—(1) In case a by-law already passed, or which may be hereafter passed, by the council of any municipality, for the construction of drainage works by assessment upon the real property to be benefited thereby, and which has been acted upon by the construction of such works in whole or in part, does not provide sufficient means, or provides more than sufficient means for the completion of the works, or for the redemption of the debentures authorized to be issued thereunder as the same become payable, the said council may, from time to time, amend the by-law in order fully to carry out the intention thereof, and of the petition on which the same was founded, and to refund the surplus (if any) to the then owners of the land *pro rata* according to the original assessment. (*e*) 46 V. c. 18, s. 574 (1); 49 V. c. 37, s. 26.

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or manner of passing" it, be "a *valid by-law.*" In other words, that which, by reason of some substantial defect, is utterly void when passed, afterwards becomes a valid by-law in consequence of the neglect of some person interested, within ten days after the passing of the by-law, to give notice of his intention to make application to quash the by-law. This is certainly a vigorous application of the maxim, "*Vigilantibus non dormientibus jura subveniunt.*" The section has not even the qualifying words "*So far* as the same ordains, prescribes, or directs anything *within the proper competence of the council*," used in sec. 331. See note *t* to that section. But it remains to be decided whether the omission of those words is to be held to confer a power *sub modo* to pass a by-law clearly beyond the competence of the council. See also sec. 352.

(*e*) Where drainage works was constructed under a contract and certain work not provided for by the contract was done without which the drain would have been useless it was held although there was no formal resolution of the council authorizing the additional work nor any contract thereof under the corporate seal that the corporation was liable. *Green* v. *Township of Orford*, 15 O. R. 506. After a drain had been constructed and accepted by the council from the contractors as completed, a balance of the assessment remained in the hands of the municipality which in compliance with a petition presented by the plaintiff and other contributories to the fund was refunded ratably by them. The plaintiff had been allotted a section of the work and had been paid therefor though he had not fully carried out his contract. After the defendants had so disbursed the full amount of the assessment, the plaintiff claimed to have discovered that the drain had not been properly constructed according to the plans of the engineer and sought on behalf of himself and other ratepayers to compel the municipality to complete the drain according

Provisions respecting by-laws passed under the preceding subsection.

(2) Where a by-law which has been heretofore passed, or which may be hereafter passed under the provisions of the preceding sub-section, has been or shall hereafter be published in the manner required by section 571 of this Act, or in case of a city, town, or incorporated village, has been or shall be notified in the manner required by section 622, section 572 shall apply to such by-law, and any by-law passed under the said preceding sub-section need not be published unless the council sees fit; and the provisions of *The Municipal Drainage Aid Act* shall apply to any debentures issued under the authority of the said sub-section which have heretofore been or shall hereafter be purchased by direction of the Lieutenant-Governor in Council. 46 V. c. 18, s. 574 (2).

Rev. Stat. c. 37.

When debentures not invalid though not in accordance with by-law.

574. No debenture issued or to be issued under any by-law aforesaid shall be held invalid on account of the same not being expressed in strict accordance with such by-law, provided that the debentures are for sums not in the whole exceeding the amount authorized by the by-law. 46 V. c. 18, s. 575.

When work may be extended beyond limits of municipality.

575. Where it is necessary to continue the works aforesaid beyond the limits of any municipality, the engineer or surveyor employed by the council of such municipality may continue the survey and levels into the adjoining municipality, until he finds fall enough to carry the water beyond the limits of the municipality in which the work was commenced and until he obtains a sufficient outlet for the water, and in every such case he may charge the lands and roads to the same extent and in the same manner as is provided by the next succeeding section. (*f*) 46 V. c. 18, s. 576; 49 V. c. 37, s. 27.

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to the plans, &c. Held that the plaintiff being himself a defaulter in the performance of his contract and having been a party to procuring a distribution of the surplus of the find which otherwise might have been devoted to attaining the object sought by him, could not require the council to execute work which they had not the means to pay for. *Dillon* v. *Township of Raleigh*, 13 A. R. 53.

(*f*) Apparently, the engineer or surveyor appointed by the council is, in the first instance, to judge of the necessity of continuing the works beyond the limits of the municipality. If he think it necessary he may continue the survey and levels into the adjoining municipality, "*until* he finds fall enough to carry the water beyond the limits of the municipality in which the work was commenced." No municipality, and no officer of any municipality, has power, in the interest of the public, to drain water on to the land of any proprietor,

When lands, etc., in adjoining municipality may be charged through works not carried into such municipality.

576. Where the works do not extend beyond the limits of the municipality in which they are commenced, but, in the opinion of the engineer or surveyor aforesaid, benefit lands in an adjoining municipality or greatly improve any road lying within any municipality, or between two or more municipalities, (*g*) then the engineer or surveyor aforesaid shall charge the lands to be so benefited and the corporation, person or company whose road or roads are improved with such proportion of the costs of the works as he may deem just; and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such municipality or company. (*h*) 46 V. c. 18, s. 577.

Report as to which municipality to bear expense.

577. The engineer or surveyor aforesaid shall determine and report to the council by which he was employed, whether the works shall be constructed and maintained solely at the expense of such municipality, or whether they shall be con-

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and lodge it there against the will of the proprietor. See *Northwood* v. *Township of Raleigh*, 3 O. R. 347. The latter part of this section is designed to remove a difficulty pointed out in *Re Dover and Chatham*, 5 O. R. 325; 11 A. R. 248; 12 S. C. R. 321. See also note *a* to sub-s. 1 of sec. 550.

(*g*) It is a condition precedent to the acquisition by one municipality of jurisdiction over lands situate in another that a petition signed by a majority of the owners of the property to be benefited situate in the municipality undertaking the work should first be presented. *Re Dover and Chatham*, 12 S. C. R. 321.

(*h*) The engineer or surveyor is in the first instance made the judge of the amount to be paid. It may be any sum that "*he* may deem *just*." Provision is hereafter made for appealing from his decision. Sec. 581. The amount, whatever it may be when ultimately determined, is to be paid out of the general funds of the municipality or company. A county may be deemed an "adjoining municipality" to one of the townships forming a part of such county, and county roads, if improved and benefited, are roads belonging to a "corporation" and "lying within any municipality." *In re Essex and Rochester*, 42 U. C. Q. B. 523. Where an award made on an appeal under these provisions did not specify the lands which, in the opinion of the arbitrators, were benefited, nor charge such lands with a just proportion of the cost of the works, the award was, for this reason, held invalid. *Township of Thurlow* v. *Township of Sidney*, 1 O. R. 249. But see *Re Dover and Chatham*, 5 O. R. 325; 11 A. R. 248; 12 S. C. R. 321. Where several municipalities are assessed for the work there should be one arbitration between all interested. *In re Essex and Rochester*, 42 U. C. Q. B. 523. The duty of the arbitrators is not merely to adjudicate upon the bulk sum charged by the report the engineer, but they should consider the manner in which such of bulk sum is apportioned and what the lots are among which it should be apportioned. *Re Dover and Chatham*, 12 S. C. R. 321.

structed and maintained at the expense of both municipalities, and in what proportion. (*i*) 46 V. c. 18, s. 578.

Plans, etc.

578. The engineer or surveyor aforesaid, (*j*) where necessary, shall make plans and specifications of the works to be constructed, and charge the lands to be benefited by the work as provided herein. (*k*) 46 V. c. 18, s. 579.

Council of municipality wherein work is to be begun to notify municipality to be benefited.

579. The council of the municipality in which the deepening or drainage is to be commenced, shall serve the head of the council of the municipality into which the same is to be continued, or whose lands or roads are to be benefited without the deepening or drainage being continued, (*l*) with a copy of the report, plans, specifications, assessment, and estimates of the engineer or surveyor aforesaid; (*m*) and

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(*i*) It may be proper under certain circumstances to subject the particular municipality in which the work is commenced to the entire cost thereof, or it may be proper to subject the adjoining municipality or some portion thereof, or some roads therein, to a proportionate part of the cost. It is for the engineer or surveyor in the first instance to determine the matter. He is required to report his determination to the council that employed him. If he find that the work should be done at the expense of both municipalities, he is also to report "in *what* proportion" each should contribute. See *Re Dover and Chatham*, 11 A. R. 248; 12 S. C. R. 321. The engineer or surveyor must, in case land or roads beyond the municipality commencing the work are to be assessed, assess "every road and lot or portion of lot" according to the proportion of benefit the same, in his opinion, derives from or will derive from the work. It must be done so that each municipality may understand for what and upon what the assessment has been made, in order to test its own liability, and to ascertain in like manner for what and upon what land or roads the other municipalities have been assessed. *In re Essex and Rochester*, 42 U. C. Q. B. 523, 547. But where only one municipality was interested the allowance in the engineer's report of a lump sum as "chargeable to municipality for roads" was held sufficient. *In re Robertson and North Easthope*, 15 O. R. 423. If it is necessary to make the report intelligible that it should be accompanied by plans or specifications, such plans and specifications must accompany the report. See secs. 569 and 578.

(*j*) *i. e.*, the engineer or surveyor appointed by the council to examine the creek, stream or water-course proposed to be deepened, or the locality proposed to be drained. See note *b* to sec. 569.

(*k*) See note *i* to sec. 577. When works are extended and continued into an adjoining township beyond the limits of the township in which they are commenced the roads in the former township and the town line are liable to be assessed in proportion to the benefits derived by them therefrom. *Re Dover and Chatham*, 11 A. R. 248.

(*l*) See note *i* to sec. 577.

(*m*) The service is to be of a copy of the report, plans and specifi-

unless the same is appealed from as hereinafter provided it shall be binding on the council of such municipality. (*n*) 46 V. c. 18, s. 580.

Municipality so notified required to raise necessary amounts.

580. The council of such last mentioned municipality shall, within four months from the delivery to the head of the corporation of the report of the engineer or surveyor, as provided in the next preceding section, pass a by-law or by-laws to raise such sum as may be named in the report, or in case of an appeal, for such sum as may be determined by the arbitrators, (*o*) in the same manner and with such other provisions as would have been proper if a majority of the owners of the lands to be taxed had petitioned as provided in section 569 of this Act. (*p*) 46 V. c. 18, s. 581.

But such municipality may appeal.

Proceedings thereon.

581—(1) The council of the municipality into which the work is to be continued, or whose lands, road or roads are to be benefited without the work being carried within its limits, may, within twenty days from the day in which the report was served on the head of the municipality, (*q*) appeal therefrom; (*r*) in which case they shall serve the

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cations and estimates of the engineer or surveyor, so far as they affect the adjoining municipality, and must be on the head of the municipality. It is not like the service of the notice under sec. 571, which must be on the head of the municipality *and* the clerk.

(*n*) See note *l* to sec. 569, and note *r* to sec. 581.

(*o*) See note *h* to sec. 576. Where an award has been made under this section, the township to be benefited must pass a by-law to raise the sum awarded against them, and cannot refuse payment until the work is completed. *Chatham* v. *Sombra*, 44 U. C. Q. B. 305. There is no remedy expressly provided for the case of improperly or insufficiently executed drainage work. If not executed at all, the money may be recovered as on a failure of consideration. *Ib.*

(*p*) The obligation to pay for the work may arise either when a majority of owners in the particular municipality petition under sec. 569, and a by-law is thereupon passed, or when such a petition and such a by-law is passed under the operation of which land in an adjoining municipality is likely to be benefited, and has been so charged by the engineer or surveyor. This section provides for the latter alternative.

(*q*) As to computation of time, see note *b* to sec. 185.

(*r*) The appeal can only be had within the time and in the manner herein directed. The right of appeal is given, as it were, only on certain conditions. The right can only be exercised within twenty days from the day on which the report was served on the head of the municipality. The mode of its exercise is by service within that

head of the corporation from which they received the report, with a written notice of appeal; such notice shall state the ground of appeal, the name of an engineer or other person as their arbitrator, (*s*) and shall call upon such corporation to appoint an arbitrator in the matter on their behalf, within ten days after the service of such notice. (*t*)

(2) When it is proposed to continue the deepening or drainage from the municipality in which the same is to be commenced into another municipality, and when through misapprehension or mistake the council served with the report, plans, and specifications of the engineer or surveyor, omits to appeal therefrom within twenty days, the Judge of the County Court of the county in which the municipality so served as aforesaid is situated may, upon application at any time before the drainage works have been already commenced or the contract let for the same, or the debentures have been actually issued under the said by-law, after the said twenty days have elapsed, by order, grant permission to appeal, upon such terms and conditions, as to costs and otherwise, as he deems just and reasonable, within a time to be limited by him in the order; or the other council or councils interested may, by resolution waive the lapse of the said time, and in either of such cases the proceedings for appeal shall be the same as would have been required if the appeal had been gone on with in the proper time.

(3) The summons to shew cause why an appeal should not be allowed shall not be returnable in less than seven days from the service thereof, and the council or councils shall have power to amend any by law or by-laws which may have been passed as shall become necessary or proper, by reason of the appeal or the result thereof. 46 V. c. 18, s. 582 (1-3.)

Arbitrators shall be appointed, etc.

582. The arbitrators shall be appointed by the parties in manner hereinbefore provided by the sections of this Act with reference to arbitration, and shall proceed as therein

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time of a written notice of appeal. The appeal is limited to the report of the engineer. The sufficiency of the by-law and the petition on which it is based can be left to the action of the courts on a proper application. Per Hagarty, C. J., in *Re Dover and Chatham*, 11 A. R. 248, 249. See also remarks of Gwynne, J., *S. C.* 12 S. C. R. at p. 343. See sec. 65 of *The Assessment Act* and notes thereto.

(*s*) See notes *a* and *b* to sec. 385, and note *d* to sec. 387.

(*t*) As to computation of time see note *b* to sec. 185.

directed; (*u*) but in no case shall the engineer or surveyor employed to make surveys, plans and specifications, nor any ratepayer or person interested in the construction of any such works be appointed or act as arbitrator. (*v*) 46 V. c. 18, s. 583.

Each municipality to contribute to maintaining the work in proportions fixed by engineer.

583—(1) After such work is fully made and completed, it shall be the duty of each municipality, in the proportion determined by the engineer or arbitrators (*as the case may be*), or until otherwise determined by the engineer or arbitrators, under the same formalities, as nearly as may be, as provided in the preceding sections, to preserve, maintain and keep in repair the same within its own limits, either at the expense of the municipality, or parties more immediately interested, or at the joint expense of such parties and the municipality, as to the council, upon the report of the engineer or surveyor, may seem just. (*a*) 46 V. c. 18, s. 584 (1).

Compelling municipalities to make necessary drainage repairs.

(2) Any such municipality neglecting or refusing so to do, upon reasonable notice in writing being given by any person interested therein, and who is injuriously affected by such neglect or refusal, may be compellable by *mandamus* to be issued by any Court of competent jurisdiction, to make from time to time the necessary repairs to preserve and maintain the same; (*b*) and shall be liable to pecuniary damage to any person who or whose property is injuriously affected by reason of such neglect or refusal. (*c*) 47 V. c. 32 s. 18.

Repair and mainten-

(3) The deepening, extending, or widening of a drain in

(*u*) See sec. 385, *et seq.*

(*v*) See note *z* to sec. 396.

(*a*) The duty to repair under this section is not confined to drains running from one municipality to another, but applies as well to drains constructed by a municipality wholly within its own limits. *White* v. *Township of Gosfield*, 10 A. R. 555; 2 O. R. 287.

(*b*) *Mandamus* is not the appropriate remedy to compel a municipal corporation to keep a highway in repair. Indictment is the Common Law mode of procedure in such a case. See note *p* to sec. 531. But in the case of a drain the reason for the preference of an indictment fails. Hence the remedy by *mandamus* is, under this section, the express remedy. It cannot be invoked unless there be a neglect or refusal on the part of the opposing municipality, after reasonable notice in writing given by any party interested therein.

(*c*) See note *b* to sec. 483.

ance, what deemed.

order to enable it to carry off the water it was originally designed to carry off, shall be deemed to be a work of preservation, maintenance, or keeping in repair within the meaning of this section ; provided the cost of such extension does not exceed the sum of $200, and in every case when it exceeds that amount, proceedings shall be taken under the provisions of section 585. (*d*) 48 V. c. 39, s. 26 (2); 50 V. c. 29, s. 47.

Duty of minor municipalities as to repairing works.

584. After any works undertaken under section 598 are fully made and completed, it shall be the duty of each minor municipality to preserve, maintain and keep in repair the same within its own limits, in accordance with the requirements of the preceding section, which shall be applicable thereto. 46 V. c. 18, s. 585.

Power to change course of drain, make new outlet, etc.

Rev. Stat. caps, 36, 37.

585. In any case wherein the better to maintain any drain constructed under the provisions of this Act, or of *The Ontario Drainage Act* and amendments thereto, or of *The Ontario Drainage Act of* 1873, or of any other act respecting drainage works and local assessment therefor, or of *The Municipal Drainage Aid Act* or to prevent damage to adjacent lands, it shall be deemed expedient to change the course of such drain, or make a new outlet, or otherwise improve, extend or alter the drain, the council of the municipality or of any of the municipalities whose duty it is to preserve and maintain the said drain, may, on the report of an engineer appointed by them to examine and report on such drain, undertake and complete the alterations and improvements or extension specified in the report under the provisions of sections 569 to 582 inclusive, without the petition required by section 569. 46 V. c. 18, s. 586 ; 47 V. c. 32, s. 19 ; 48 V. c. 39, s. 27 ; 49 V. c. 37, s. 28 ; 50 V. c. 29, s. 39.

(*d*) A by-law passed for raising the unpaid portion of the expense of cleaning out and repairing a drain, otherwise good on its face, was objected to on the ground that while the resolution and by-law authorizing the work to be done were for such cleaning and repairing only, the work actually done included deepening which it was contended could only be done by petition therefor under sec. 569. It appeared that the deepening if done at all, which was doubtful, was done accidentally and not by design. Under these circumstances, the objection being without merits, and as much inconvenience would have ensued had the by-law been quashed an application therefor was refused ; and quære whether the municipality had not power without petition to do such work, including deepening, as might be incidental to maintaining the drain in an efficient state. *Begg* v. *Township of Southwold*, 6 O. R. 184.

Works not extended beyond municipality commencing same, etc., or which do not benefit any other municipality, to be maintained by municipality commencing same.

586—(1) In any case wherein after such work is fully made and completed, the same has not been continued into any other municipality than that in which the same was commenced, or wherein the lands or roads of any such other municipality are not benefited by such work, (*e*) it shall be the duty of the municipality making such work, to preserve, maintain and keep in repair the same at the expense of the lots, parts of lots and roads, as the case may be, as agreed upon and shewn in the by-law when finally passed. (*f*)

When work has been paid for out of funds of municipality repair may be charged on property benefited.

(2) In any case where similar work has been constructed out of the general funds of the municipality, the council may without petition, on the report of an engineer or surveyor, pass a by-law for preserving, maintaining and keeping in repair the same at the expense of the lots, parts of lots and roads, as the case may be, benefited by such work, and may assess such lots, parts of lots and roads so benefited, for the expense thereof, in the same manner, by the same proceedings, and subject to the same right of appeal as is provided with regard to works made and completed under the provisions of this Act. 46 V. c. 18, s. 587 (1, 2); 50 V. c. 29, s. 40.

Assessment may be changed.

(3) The council may, from time to time, change such assessment on the report of an engineer or surveyor appointed by them to examine and report on such work and repairs, subject to the like rights of appeal as a person charged would have in the case of an original assessment; and the said council shall appoint a Court of Revision to consider such appeals in the manner heretofore provided. (*g*) 50 V. c. 29, s. 41, *part.*

Repair and maintenance, what deemed.

(4) The deepening, extending, or widening of a drain in order to enable it to carry off the water it was originally

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(*e*) See note *i* to sec. 577.

(*f*) See sec. 570. An absolute duty to repair is imposed on the municipality. For neglect of that duty an action will lie at the suit of any one injured by such neglect. *White* v. *Township of Gosfield*, 10 A. R. 555; 2 O. R. 287. Reasonable notice in writing is a prerequisite to the maintenance of an action for damages arising from neglect to repair. See *Crysler* v. *Township of Sarnia*, 15 O. R. 180.

(*g*) The power is "from time to time" to change the assessment. But this can only be done on the report of an engineer or surveyor appointed to examine and report on the drain, deepening or repairs. Notice of such change should of course be given to the parties concerned, so that they may, if dissatisfied or aggrieved, appeal therefrom.

designed to carry off, shall be deemed to be a work of preservation, maintenance, or keeping in repair within the meaning of this section; provided the cost of such extension does not exceed the sum of $200, and in every case where it exceeds that amount, proceedings shall be taken under the provisions of section 585. 48 V. c. 39, s. 26 (2); 50 V. c. 29, s. 47.

Repayment of advances.

(5) In any of the cases referred to in this and the preceding sections, any moneys that have been or may hereafter be advanced by the council of any municipality out of its general funds in anticipation of the levies to be made for the purposes of the said sections, shall be recouped to the municipality so soon as the moneys derived from the assessment shall have been made. 50 V. c. 29, s. 41, *part.*

Application of ss. 583, 586 and 589.

Rev. Stat. caps. 36, 37.

587. The provisions of sections 583, 586 and 589 of this Act shall extend to drains constructed under the provisions of the *The Ontario Drainage Act*, and amendments thereto, or of *The Ontario Drainage Act, 1873*, or of *The Municipal Drainage Aid Act*, the word "assessors" being substituted as to such drains for the word "engineer" in the third line of section 583. 48 V. c. 39, s. 26 (1).

Drains to be kept free from obstructions.

Rev. Stat. c. 36.

588—(1) In the event of any ditch, drain, creek or water-course that has been constructed or opened up under the provisions of *The Ontario Drainage Act*, or any of the amendments thereto, or under the provisions of any Act respecting drainage to be paid by local rate, becoming obstructed, so that the free flow of the water is impeded thereby, if the aforementioned obstructions have been wilfully or through negligence placed in such ditch, drain, creek, or water-course, by any party or parties through whose land, or between whose lands, such ditch, drain, creek, or water-course is situate, the party or parties causing the same shall, upon notification in writing by the council of the municipality, or an officer appointed by the council for the inspection or care of drains, remove such obstructions, and if not so removed within the time specified, the council shall, without further delay, have the same removed at the cost of the said party or parties. 46 V. c. 18, s. 588 (1); 49 V. c. 37, s. 29, *part.*

(2) If such cost is not paid by the party or parties to the person performing the same when the work is completed, the council shall pay the amount to the party performing the work; and the clerk of the municipality shall place such

amount upon the collector's roll against the party or parties, as the case may be, with ten per cent. added thereto, and the same shall be collected like other taxes, subject, however, to an appeal by the said party or parties, in respect of the cost of the work, to the Judge of the County Court of the county in which the lands are situate, in the same manner as is provided by section 11 of *The Ditches and Watercourses Act* (*h*) 46 V. c. 18, s. 588 (2). Rev. Stat. c. 220.

(3) Any person or persons who shall wilfully and intentionally obstruct, fill up or injure, any drains constructed under the provisions of any of said Acts, or wilfully or intentionally cut, destroy or injure any embankment or other drainage work connected therewith, shall upon the complaint of the council of the municipality, liable to keep such drain, embankment or work in repair, and upon conviction thereof before a Justice of the Peace, be liable to a fine of not less than $1 nor more than $50. 49 V. c. 37, s. 29, *part.* Penalty for obstructing drain.

589—(1) Where the repairs, required to be made under either section 583 or section 586, are so extensive that the municipal council does not deem it expedient to levy the cost thereof in one year, the said council may pass a by-law to borrow upon the debentures of the municipality the funds necessary for the work, and shall assess and levy upon the property benefited a special rate sufficient for the payment of the principal and interest of the debentures; the by-law shall not require the assent of the electors. (*i*). Power to borrow funds for repairs to drainage works.

(*h*) A by-law defining the duties of inspectors of drains and enacting that obstructions wilfully placed in drains should be removed by the parties placing them there or at their expense without regard to whether such parties owned the lands through or between which such drains were situate; that if such obstructions were removed by the council the cost should on completion of the work be paid by the Council instead of enacting that it should be so paid only in the event of the party chargeable with the obstruction failing to do so; that if paid by the Council the amount of such work should be charged on the collector's roll against the lands of the party chargeable instead of only against the party himself and not providing for an appeal against the charging of such work upon the collector's roll was quashed as varying from the provisions of the statute in matters affecting the rights of property and of taxation. *In re Clark and Township of Howard*, 9 O. R. 576.

(*i*) This section does not authorize the passing of a by-law for cleaning out or improving a drain without the due observance of the formalities mentioned or referred to in sec. 583. It must be read in conjunction with the sections mentioned in it. *Alexander* v. *Township of Howard*, 14 O. R. 22.

Rev. Stat. c. 37.

(2) The provisions of *The Municipal Drainage Aid Act* shall apply to any debentures issued under the authority of any such by-law, if such by-law, before it was finally passed, was published or notified in the manner provided by section 571 of this Act, or, after it was passed, was promulgated in the manner authorized by section 329 of this Act. 46 V. c. 18, s. 589.

Case of drain used by another municipality.

590. If a drain already constructed or hereafter constructed, by a municipality, is used as an outlet, (*j*) by another municipality, company or individual, or if any municipality, company or individual, by any means causes waters to flow upon and injure the lands of another municipality, company, or individual, the municipality, company, or individual, using such drain as an outlet or otherwise, or causing waters to flow upon and injure such lands, may be assessed in such proportion and amount as may be ascertained by the engineer, surveyor or arbitrators under the formalities except the petition provided in the foregoing sections for the construction and maintenance of the drain so used as an outlet as aforesaid; or for the construction and maintenance of such drain or drains as may be necessary for conveying from such lands the waters so caused to flow upon and injure the same. 46 V. c. 18, s. 590; 49 V. c. 37, s. 30.

Disputes as to damage done by works to be referred to arbitration.

591. If any dispute arises between individuals or between individuals and a municipality or company, or between a company and municipality, or between municipalities, as to damages (*k*) alleged to have been done to the property of any

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(*j*) Where such a drain is constructed by a municipal corporation, those whose land is benefited thereby are called upon to contribute towards the cost of construction and maintenance. Sec. 569. If such a drain be used by another municipality, company or individual as an outlet, or otherwise, it is only just that such municipality, company or individual should be assessed proportionately for construction and maintenance. The proportion is, is in the first instance, to be ascertained by the engineer or surveyor, subject to appeal, as provided in the preceding sections. It only remains to be noticed that this section is, on the face of it, applicable "to a drain *already* constructed," as well as to drains hereafter to be constructed.

(*k*) The ordinary mode of redress for damages alleged to have been done to property in the construction of public works, or arising therefrom, in the absence of legislative provision to the contrary, is an action. But where the Legislature has provided a special mode of determining such matters, that mode and no other is the one to be followed. See *Vestry of St. Pancras* v. *Battersbury*, 2 C. B. N. S. 477.

municipality, individual or company, in the construction of drainage works, or consequent thereon, (*l*) then the municipality, company or individual complaining may refer the matter to arbitration, as provided in this Act; (*m*) and the award so made shall be binding on all parties. (*n*) 46 V. c. 18, s. 591.

Damages caused by drainage to be charged on land liable for cost of drainage. Rev. Stat. c. 36.

592. Where on account of proceedings taken under this Act, or *The Ontario Drainage Act*, or other Acts respecting drainage works and local assessments therefor, damages are recovered against the corporation or parties constructing the drainage works, or other relief is given by any judgment or order of any Court, or any award made under this Act, all such damages, or any sum of money that may be required to enable the corporation to comply with any such judgment, order or award, made in respect thereof, shall be charged *pro rata* upon the lands and roads liable to assessment for such drainage works; provided always, that if to enable the corporation to comply with any such judgment, order or award, it shall be necessary or expedient to change the course of any drain, or to make a new outlet or otherwise improve or alter any drain or drainage works, the same shall for all purposes

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(*l*) It has been held that a party owning a house in which he carried on an inn was, not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by an unauthorized act of lowering the roadway, but only for direct structural injury occasioned by the unauthorized interference with his cellar. *Bigg* v. *London*, L. R. 15 Eq. 376; but see *Ricket* v. *Metropolitan R. Co.*, L. R. 2 H. L. 175; *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418; *Beckett* v. *Midland R. W. Co.*, L. R. 3 C. P. 82; *McCarthy* v. *Metropolitan Board of Works*, L. R. 7 C. P. 508; L. R. 8 C. P. 191.

(*m*) See sec. 385, *et seq.* When a municipality without a by-law therefor constructed drains by which offensive matter was discharged into a creek running through the lands of the plaintiff, it was held that the plaintiff was entitled to maintain an action for his injury sustained and for an injunction and was not compelled to sue those who had discharged the offensive matter into the drains nor to seek his remedy under the arbitration clauses, nor to resort to mandamus to compel better drainage. *Van Egmond* v. *Town of Seaforth*, 6 O. R. 599. See also *Malott* v. *Township of Mersea*, 9 O. R. 611; *Alexander* v. *Township of Howard*, 14 O. R. 22. But where work was done under a by-law and there was no negligence proved it was held that compensation for injury caused by the work must be sought as provided by this section. *Preston* v. *Corporation of Camden*, 14 A. R. 85.

(*n*) See note *e* to sec. 398.

and in all respects be dealt with and carried out, and all works and operations in respect thereof shall be executed and performed as if the same were alterations and improvements within the meaning of section 585, and all provisions of this Act applying to, or in respect of any work, alteration or improvement provided for by the said section, shall apply to any work, alteration or improvement intended to be provided for by this section. 49 V. c. 37, s. 31.

Carrying drains into adjoining lots or across highways.

593. In case any person finds it necessary to continue an underdrain into an adjoining lot or lots, or across or along any public highway, for the purpose of an outlet thereto, and in case the owner of such adjoining lot or lots, or the council of the municipality, refuses to continue such drain to an outlet, or to join in the cost of the continuation of such drain, then the firstly mentioned person shall be at liberty to continue his said drain to an outlet through such adjoining lot or lots, or across or along such highway; (*o*) and in case of any dispute as to the proportion of cost to be borne by the owner of any adjoining lot or municipality, the same shall be determined under the provisions of and in the same manner as is provided for the determination of similar disputes by *The Ditches and Watercourses Act.* 48 V. c. 39, s. 28.

Rev. Stat. c. 220,

Power to contract to spread, earth, etc., on making ditch for drainage.

594. Where, under the provisions of sections 569 to 632, both inclusive, of this Act, a ditch is being constructed for drainage purposes along a road allowance, contracts may be made by the municipal council so constructing for spreading the earth taken from the ditch on the road; (*p*) and if the road or any part thereof is timbered, or if stumps are in the way, the timber may be removed; and not less than twelve feet of

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(*o*) No man or municipality has a right in the absence of legislation to the contrary, without the consent of the owner to enter upon property for the purpose of continuing an under drain, or for any similar purpose. The power is here to some extent conferred. It is to continue the drain "to an outlet" "through such adjoining lot or lots, or across or along such highway." Care must be taken by the person exercising the power not to make such adjoining land or highway a receptacle for water drained off his land. See note *a* to sub. 1 of sec. 550.

(*p*) It has been held that a municipal corporation who laid out a street over the land of a private individual and appraised the damages, may, in reducing such street to the proper grade, carry the soil therefrom and deposit it on a street in another part of the same municipality. *City of New Haven* v. *Sargent*, 9 Am. 360.

the centre of the road shall be grubbed before the earth is spread upon it. 46 V. c. 18, s. 594.

Payment by municipality.

595. The removal of the timber, grubbing and spreading of the earth, together with such portion of the cost of the ditch as the engineer or provincial land surveyor may deem just and proper, shall be charged to the municipality and paid out of its general funds. (*q*) 46 V. c. 18, s. 595.

Construction of ditch on town line between municipalities.

596. Where it is necessary to construct such a ditch along a town line between two or more municipalities, the municipal council of either of the adjoining municipalities may, on petition, as provided for in section 569 of this Act, (*r*) cause the ditch to be constructed on either side of the road allowance between the municipalities and make the road in manner as provided in the last preceding two sections of this Act, and shall charge the lands and roads benefited in the adjoining municipality or municipalities with such proportion of the cost of constructing the said ditch as the engineer or surveyor aforesaid, deems just and proper; (*s*) and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such municipality or municipalities. 46 V. c. 18, s. 596.

Secs. 569-632 to apply.

597. The provisions of sections 569 to 632, both inclusive of this Act shall apply as far as applicable to such ditch. (*t*) 46 V. c. 18, s. 597.

Where more than one municipality in same county, affected county council may pass by-law.

598—(1) Where any works proposed to be constructed in any locality under section 569 affect more than one municipality, either on account of such works passing, or partly passing, through two or more municipalities, or on account of the lowering or raising of the waters of any stream or lake, which is contemplated in the proposed scheme of drain-

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(*q*) The engineer or provincial land surveyor has a large discretion conferred upon him. Whatever he deems "just and proper" in respect of the expenses of the removal of the timber, grubbing and spreading of the earth, is to be charged to the municipality and paid out of its general funds. This of course intends a decision by the officer indicated acting in perfect good faith. See note *b* to s. 612.

(*r*) See notes to s. 569.

(*s*) See note *q* to sec. 595.

(*t*) The ditch meant is one along the town line between two or more municipalities, such as provided for by sec. 596.

age, either draining or flooding lands in two or more townships, the county council of the county to which such municipalities belong, upon the application of the council of any of the municipalities affected, and without any preliminary petition from the owners of the property to be benefited may pass by-laws for the purposes authorized by the said section. 46 V. c. 18, s. 598 (1).

Sections 569-574, 576, 590 and 591 to apply to work under this section.

(2) Unless where contrary to this Act the provisions of sections 569 to 574, 576, 590 and 591 shall apply to any works constructed under this section; but the Court to be held for the trial of complaints in the first instance shall be composed of three or more persons, nominated by the county council for that purpose, who may or may not be members of the council, as the council may deem expedient, and any three or more of the persons nominated who are present at the sittings of such Court, may proceed and adjudicate upon any complaints, notwithstanding the absence of one or more of the members of the Court. The engineer or surveyor who made the assessment shall not be a member of the Court of Revision. 46 V. c. 18, s. 598 (2); 49 V. c. 37, s. 33.

Where court for trial of complaints shall sit.

(3) The sittings of such Court shall be held in the county town, or in such other place or places as the county council or the majority of the said Court may name. All complaints against the assessment shall be lodged with the clerk of the county. 46 V. c. 18, s. 598 (3).

County to raise necessary funds, but townships to be liable for same.

599. The county shall raise the money necessary for the construction of the said works, but each township shall be liable to the county for the amount payable in respect of all the lands within such township, and each township shall pass such by-laws as may be requisite for collecting the amount assessed against the lands or roads within its jurisdiction. 46 V. c. 18, s. 599.

Construction of works in several counties.

600—(1) In case the municipalities upon which the cost of the works would fall are in several counties, any of the counties may procure an examination to be made by an engineer or Provincial land surveyor of the lands affected by the proposed works, and may procure plans of the work, and estimates to be made of the cost thereof, including an estimate of the amount to be paid for damages, if any, and an assessment to be made by such engineer or Provincial land surveyor of the real property to be benefited, stating,

as nearly as may be in the opinion of such engineer or surveyor, the proportion of benefit to be derived from such works by every road and lot or portion of lot.

(2) Any municipality may agree to indemnify the county, in respect of the expenses incurred in the case of the works not being proceeded with. 46 V. c. 18, s. 600.

Municipality may agree to indemnify county.

601. The council shall thereupon, if it considers it desirable to proceed with the work, pass a resolution to this effect, and shall cause a copy of the said report to be published at least once in newspapers published in the county towns of the several counties affected, or in newspapers published in such of the said county towns as have newspapers, but it shall not be necessary that such report shall be published in more than one paper in one county town, and shall cause to be served a copy of the report, plans, specifications, estimates, and assessment upon the warden of each of the other counties affected. 46 V. c. 18, s. 601.

If work approved by council report to be published, and copies of plans, etc., served on warden of each county.

602—(1) In case ten of the owners of the property assessed, within ten days of the first publication of the report in a newspaper published in the county town of the county the council of which procured the examination to be made, petition such council not to proceed with the work, such council shall, if it desires to proceed therewith, pass a by-law for taking the votes of the persons assessed, upon the question whether or not the work shall be proceeded with; such by-law shall provide for holding a polling place in each municipality affected, whether within or without the county passing the by-law; and every person whose lands are assessed, or if the lands of a married woman are assessed, then the husband of such married woman, shall be entitled to vote upon the question: Provided the person proposing to vote is of the full age of twenty-one years, and shall, if required, name the lands in respect of which he claims to be entitled to vote; and shall also, if required take the oath or affirmation following:

When votes of persons assessed to be taken.

Proviso.

You swear that you are of the full age of 21 years, and a natural born (*or* naturalized) subject of Her Majesty.

That you have not voted before in the township on the question now being voted upon.

That you are the owner (*or as the case may be*) of the lands in respect of which you claim to vote, namely (*here mention the lands*).

That you are, according to law, entitled to vote on the said question

Form of oath.

That you have not directly or indirectly, received any reward or gift, nor do you expect to receive any, for the vote which you tender.

That you have not received anything, nor has anything been promised to you, directly or indirectly, either to induce you to vote on the said question, or for loss of time, travelling expenses, hire of team, or any other service connected therewith.

That you have not directly or indirectly, paid or promised anything to any person, either to induce him to vote, or to refrain from voting.

So help you God.

Deputy returning officer and proceedings at poll.

(2) The clerk of each municipality shall act as deputy returning officer at the polling place in such municipality, and the proceedings for taking the poll shall be the same, as nearly as may be, as the proceedings upon voting upon a by-law.

Who to be returning officer.

(3) The clerk of the county council which passed the by-law shall act as returning officer. 46 V. c. 18, s. 602.

Service of "requisition of appeal," and effect thereof.

603.—(1) If a vote of the owners has been taken, and they have decided in favour of proceeding with the work, or if such a vote has not been taken, then after the time for presenting a petition as aforesaid has elapsed, in case the council or councils of the county or counties upon which two-thirds of the cost of such work fall, shall have passed a resolution or resolutions to the effect that it is desirable to proceed therewith, the council which caused the survey to be made may serve upon the warden of the other county, or each of the other counties, a notice (hereinafter called a requisition of appeal) requiring such county to state whether or not it is content to accept the assessment made, as shewing the proper proportion to be borne by such county, and notifying such council that if dissatisfied with such assessment they must, within thirty days from the receipt of such notice by their warden, appeal therefrom.

Time within which notice of appeal to be served.

(2) If the council whose warden is served with a requisition of appeal do not, within thirty days of such service, serve the warden of the council from which they received the requisition with a written notice of appeal, they shall be deemed to have accepted the assessment: Provided that the High Court, or a judge thereof, if it be shewn that the omission to serve the notice of appeal was through mistake, oversight, or misadventure, may, upon such terms, as to the court or judge seem just, relieve them and permit them to appoint an arbitrator.

Proviso.

(3) In case a council whose warden is served with a requisition of appeal is dissatisfied with the proportion assessed against the county, or with the proportion assessed against any other county, they shall, within thirty days of the receipt of the requisition by their warden, serve the warden of the county from which they received the requisition with a written notice of appeal, and shall also serve each of the other counties affected with a like notice. Parties on whom notice of appeal to be served.

(4) The notice shall state the grounds of appeal, and the name of an arbitrator appointed by such council, and shall call upon the council served to appoint an arbitrator on their behalf within ten days after service of such notice. Particulars which notice is to contain.

(5) In default of an appointment, within the said term, the Judge of the County Court of the county in default shall appoint an arbitrator for such county. Appointment of arbitrator by county judge.

(6) Neither the engineer or surveyor who made the assessment, nor any officer or member of any council concerned, shall be appointed an arbitrator. When may not be arbitrators.

(7) In case, after such council has appointed an arbitrator, there is an even number of arbitrators, such arbitrators shall select an additional arbitrator, or in case of the arbitrators not agreeing in such selection within thirty days after the completion of their number, the Lieutenant-Governor in Council may appoint such additional arbitrator. 46 V. c. 18, s. 603. Provision in case there is an even number of arbitrators.

604. The arbitrators shall, by their award, determine the proportion of the cost of such work that is to be borne by each of the minor municipalities whose lands are affected thereby. 46 V. c. 18, s. 604. Arbitrators to apportion cost of work.

605. In case of a difference between the arbitrators, the decision of the majority shall be conclusive, and the arbitrators shall make their award in so many parts as may be necessary to permit of one thereof being filed with the clerk of each of the counties interested, and one shall be filed with the clerk of each such county accordingly. 46 V. c. 18, s. 605. Decision of majority to be binding.

606. In case a majority of the arbitrators are unable within six months of their appointment to agree, or in case, prior to the expiration of the said term, they, by an instrument in writing, signed by the majority of them, declare their inability Application to High Court of Justice when arbitrators unable to agree.

to agree upon a complete award, any of the counties interested may apply to a Judge of the High Court to appoint an umpire, and the umpire may make an award upon hearing the points in difference between the arbitrators stated by them, or may, if he deems necessary, re-hear the entire case, or such particular parts thereof as he considers requisite. 46 V. c. 18, s. 606.

Right of minor municipalities interested to appear on arbitration.

607. Any of the minor municipalities interested may appear by their head, or by their counsel or agent, before the arbitrators, in support of the assessment, or of any variations which they contended should be made in the proportions in which the minor municipalities are assessed. 46 V. c. 18, s. 607.

Where several counties interested, by-laws for assessment not to be passed pending appeal.

608. In case more counties than one are concerned, no by-laws for assessing the cost of the work upon the various parcels and roads shall be passed until it is ascertained that there is not to be an appeal, or until after the award is made, where an appeal is had. 46 V. c. 18, s. 608.

After award made, or after time for appeal expired, each county to pass by-law for raising sum required.

609. Immediately upon an award being made, or, in case there is no appeal, immediately after the time for appealing has elapsed, each county interested shall pass a by-law or by-laws to raise the sum chargeable against such county, and for assessing and levying the same, in accordance with the proportions fixed by the report of the engineer or surveyor, upon the real property within the county to be benefited by the said works, and for the appointment of a court for the trial, in the first instance, of complaints against such assessment in the same manner and subject to the same conditions as is hereinbefore provided in respect of a county which is solely interested. 46 V. c. 18, s. 609.

Application of ss. 584, 592, 598 (2, 3), and 599.

610. Sections 584, 592, and 599, and sub-sections 2 and 3 of section 598 shall apply to drainage works, in which several counties are interested, as well as to works which only affect one county. 46 V. c. 18, s. 610.

Powers of municipalities to be subject to Rev. Stat. c. 199.

611. In case any of the drainage works hereinbefore referred to are to be carried through, across, under, or along the railway of any railway company, in respect of which the legislature has authority in this behalf, the powers of the municipal councils are, so far as regards the railway, to be exercised subject, as nearly as may be, to the terms and restrictions contained in *The Railway Streets and Drains Act.* 46 V. c. 18, s. 611.

Cost of Local Improvements. Secs. 612-628.

Councils may make by-laws for—

612. The council of every township, city, town, and incorporated village may (*a*) pass by-laws for the following purposes:

Manner of ascertaining real property benefited by local improvements.

1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property benefited thereby; and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of real estate so benefited; (*b*) and there shall be the same right of appeal from any such assessment to the Court of Revision, and from the Court of Revision to the County Judge, as is provided for by section 569 of this Act, and the proceedings thereon shall, except as otherwise provided in section 622 of this Act, be the same respectively as in the case of appeals from ordinary assessments under *The Assessment Act.* (*c*) 47 V. c. 32, s. 20; 50 V. c. 29, s. 48.

Appeal.

Rev. Stat. c. 193.

(*a*) This and the following sections to 630 inclusive applies, when any incorporated village or settlement and its immediate neighbourhood lie wholly within the limits of a township, and when the residences of its inhabitants are sufficiently near to each other, in the opinion of the council of such township municipality, to render the same desirable, and the council of the township in which the same are situate, on the petition of a majority of the ratepayers within the area to be set off, one-half of whom shall be resident freeholders, by by-law, set such unincorporated village or settlement and neighbourhood apart from the remaining portion of the township in which the same are situate, and with boundaries to be respectively defined and declared in the by-law for the purpose. See sec. 17 (3) (*b*).

(*b*) The Court will not entertain an application to set aside a by-law as a matter of fact, which, according to this Act, or a by-law passed under it, should be ascertained and determined by an officer of the corporation, in the absence of fraud or corrupt conduct being imputed to such officer. Sea *In re Michie and Toronto*, 11 U. C. C. P. 379; see also *In re Montgomery and Raleigh*, 21 U. C. C. P. 381; *Wright v. Chicago*, 2 Withrow 176; *Elliott* v. *Chicago*, *Ib.* 181; *Jenks* v. *Chicago*, *Ib.* 183. Houses may be benefited by local improvements such as paving, &c., although not immediately and directly fronting on the street paved. *Baddeley* v. *Gingell*, 1 Ex. 319; *Sohool Board for London* v. *Vestry of St. Mary, Islington*, 1 Q. B. D. 65; *Wakefield Local Board of Health* v. *Lee*, 1 Ex. D. 336; see also *Whitchurch* v. *Fulham Board of Works*, L. R. 1 Q. B. 233; *Vestry of Mile End* v. *Guardians of Whitechapel Union*, 1 Q. B. D. 680; *Lightbound* v. *Higher Bebington Local Board*, 16 Q. B. D. 577.

(*c*) If it were not for this provision the action of the municipal

General by-law for determining property benefited by improvements sufficient.

(a) It shall be deemed to have been and to be a sufficient compliance with the provisions of the preceding paragraph of this sub-section if the council shall have passed or shall pass a general by-law or general by-laws, providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed upon the real property immediately benefited thereby, and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of real estate so benefited, and it shall not be deemed to have been, or to be, necessary to pass a special by-law for the purposes above mentioned in each particular instance; but nothing in this paragraph shall affect any litigation pending on the 30th day of March, 1885, or the rights of the parties thereto; 48 V. c. 39, s. 36.

Assessing and levying upon real property benefited the cost of certain public works.

2. For assessing and levying by means of a special rate, the cost of deepening any stream, creek, or water course, and draining any locality, or making, enlarging or prolonging any common sewer, or opening, widening, prolonging, or altering, macadamizing, grading, levelling, paving, or planking any street, lane, alley, public way or place, or any sidewalk, or any bridge forming part of a highway therein, or curbing, sodding, or planting any street, lane, alley, square, or other public place; or reconstructing, as well as constructing any work hereby provided for; (*d*)

Preceding subsections not to apply to certain works.

3. Nothing contained in the preceding sub-sections shall be construed to apply to any work of ordinary repair or maintenance; but all works constructed under the said preceding sub-sections shall thereafter be kept in a good and sufficient state of repair at the expense of the township, city, town or village generally, (*e*) 46 V. c. 18, s. 612 (2-3): 50 V. c. 29, s. 48.

Rate to be assessed on frontage.

4. The special rate to be so assessed and levied shall be an

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council acting within its jurisdiction could not be reversed. See *Nesbitt* v. *Greenwich Board of Works*, L. R. 10 Q. B. 465.

(*d*) As to the liability of the municipality to contractors for work done under local improvement by-laws. See *Dillon* on Municipal Corporations, 3rd ed. ss. 480, 481.

(*e*) See note *p* to sec. 531.

annual rate according to the frontage thereof, upon the real property fronting or abutting upon the street or place whereon or wherein such improvement or work is proposed to be done or made subject to the provisions following, namely :

(*a*) Unless the majority of the owners of such real property, representing at least one-half in value thereof, petition the council against such assessment, within one month after the last publication of a notice of such proposed assessment, in at least two newspapers published in such township, city, town, or incorporated village, if there are two newspapers published therein ; and if there are not, then in a newspaper published nearest to the proposed improvement or work, such publication to be once in each week for two weeks ; any leaseholder, the term of whose lease (including any renewals therein provided for) is not less than twenty-one years, shall be deemed an owner within the meaning of this sub-section if the lessee has therein covenanted to pay all municipal taxes on the demised property during the term of said lease ; 46 V. c. 18, s. 612 (4*a*) ; 49 V. c. 37, s. 32 ; 50 V. c. 29, s. 48.

(*b*) In the event of any such petition against any such proposed assessment, sufficiently signed, being presented to the council, no second notice of assessment for the same proposed improvement shall be given by the council within two years thereafter ;

(*c*) The number of the owners petitioning against the assessment and the value of the real property which they represent, may be ascertained and finally determined in such manner and by such means as are provided by by-law in that behalf; 46 V. c. 18, s. 612 (4*bc*).

Provision in case of insufficient or excessive assessment.

5. If in any case the first assessment for any local improvement proves insufficient, the council shall make a second in the same manner, and so on until sufficient moneys shall have been realized to pay for such improvements or works, and if too large a sum shall at any time be raised, the excess shall be refunded ratably to those by whom it was paid ; (*f*)

(*f*) See sec. 573, sub-s. 1.

Regulating time and manner of levying assessments, etc.

6. For regulating the time or times and manner in which the assessments to be levied under this section are to be paid, (*g*) and for arranging the terms on which parties assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums; (*h*)

(*g*) The by-law of a municipal corporation, passed in 1865, for the purpose of authorizing the levying of a rate for certain local improvements, in the shape of the pavement of sidewalks, after reciting a previous resolution of the council accepting a tender for the work and authorizing the passage of a by-law to levy a certain rate per foot frontage on the owners of real estate on the parts of several streets named, provided that the required sum should be raised by local taxation "upon the proprietors of the several lots of land adjoining said sidewalks immediately benefited thereby; except that part on James street opposite the Market Place, and those parts on Church street opposite the several churches and school houses," that the persons named in the first column of the schedule annexed to the by-law were proprietors of land adjoining the sidewalks and were immediately benefited thereby; that the whole of the said property so benefited was by the assessment rate of 1865 rated at $12,554, enacted that there should be raised from the said proprietors twenty-two and a half cents in the dollar, and that the collector for 1865 should collect the same in the usual way. It then repealed a by-law of 1864, authorizing the levying of the frontage rate. The work in question had been begun, finished, and paid for in 1864, with the exception of $659, which were paid before the passage of the by-law of 1865. There was the further fact, that the whole of plaintiff's property at the corner of two streets was assessed, whereas the flagging extended only over a portion of it. Held, that the by-law contained nothing objectionable on its face; but assuming it defective in providing for the debt of the previous year, it was merely providing in 1865 for a debt contracted and provided for by the by-law of 1864, but provided for imperfectly, and that the mere repeal of a defective, doubtful or invalid rate imposed within the jurisdiction of the council, for another free from all objection, was not a violation of the rule against prospective rates. Held also, that it was no objection to the by-law that certain proprietors were rated for the special rate who were not on the general assessment roll, nor that the assessed value of 1864 was taken instead of that of 1865, as this did not appear on the face of the by-law, and could be raised in an action of replevin. Held also, that the whole of plaintiff's property as assessed was liable, though the flagging extended over a portion only. *Haynes* v. *Copeland*, 18 U. C. C. P. 150; see further, *Great Western R. W. Co.* v. *West Bromwich Commissioners*, 1 E. & E. 806; *Blackburn* v. *Parkinson*, *Ib.*, 71; *Pound* v. *Plumstead Board of Works*, L. R. 7 Q. B. 183; *Plumstead Board of Works*, v. *British Land Co.*, L. R. 10 Q. B. 16; *Dryden* v. *Overseers of Putney*, 1 Ex. D. 223; See also note to sub-s. 10 of sec. 2 of The Assessment Act.

(*h*) Before this provision the Court in one case intimated that the owner or occupier of property drained by a common sewer might

7. For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected. 46 V. c. 18, s. 612 (5-7). If funds furnished by parties.

8. If the contemplated improvement is the construction of a common sewer having a sectional area of more than four feet, one-third of the whole cost thereof shall be provided for by the council; (*j*) the council of any municipality which has not passed a by-law within and under the provisions of section 625 of this Act shall also provide, in connection with all sewers, the cost of all culverts and other works necessary for street surface drainage, and shall also provide the cost of that part of every such work, improvement or service which is incurred at and is chargeable in respect of street intersections, and also that part thereof done or made opposite real property which by any general or special Act is exempt from special or local assessment; Construction of sewers, etc., in part to be provided by council.

9. Upon the receipt of a petition praying for any of the works, improvements or services mentioned in this section, signed by at least two-thirds in number of the owners of any real property to be benefited thereby, such owners representing at least one-half in value of such real property, the council may make the necessary assessment, pass the necessary by-laws, and take all the proper and necessary proceedings for the execution and completion of such work, improvement or service, with as little delay as possible; (*k*) 47 V. c. 32, s. 21. Council to undertake works on petition of owners to be benefited.

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legally be allowed to commute by payment of a fixed sum. *In re McCracken and Toronto*, 22 U. C. Q. B. 613.

(*j*) A municipal corporation contracted with a paver to do certain work at a fixed price, of which the corporation was to pay one-third and the owners two-thirds. It was, however, judicially determined that the owners were in law liable to pay only one-third. Held, that the paver had the right to recover two-thirds against the corporation. *Tessier v. Municipality Number One*, 5 La. An. 295; see further, *Owners v. Municipality Number one*, *ib.*, 327; *Maher v. Chicago*, 38 Ill. 266; *Chicago v. The People*, 48 Ill. 416; *Kelly v. Philadelphia*, 60 Pa. St. 467; *Michel v. Police Jury*, 9 La. An. 97.

(*k*) The petition must be "signed by at least two-thirds in number of the owners of any real property to be benefited thereby, such owners representing at least one half in value of such real property." It is not said how the ownership of the property is to be determined and so differs from sec. 560, where the petition for drainage purposes is required to be signed by "the majority in number

Lands benefited to be charged with proportion of cost of certain local improvements.

10. If the contemplated works or improvements relate to any stream, creek or watercourse, or to draining any locality, and in the opinion of the engineer or surveyor benefit any lands lying within the municipality, or any road or roads lying therein, then the engineer or surveyor aforesaid shall charge the lands to be so benefited, and the corporation, person or company whose road or roads are improved, with such proportion of the cost of the work or improvement as

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of the persons as shewn by the last revised assessment roll to be the owners (whether resident or non-resident) of the property to be benefited." As some of the local improvements are of an extensive and costly nature, it would hardly be contended that a person, on the assessment roll but who had parted with his property months before the improvement was contemplated, should be allowed to represent the property for the purpose of imposing this assessment, by signing the petition, though it is not easy to determine why there should have been a distinction made as to the qualification of the signers of the petition in this and in section 569. See, however, the form of the notice given in sec. 623, from which it would seem that it is sufficient to ascertain the names of the owners from the last revised assessment roll. Where a by-law provided that the number of owners and the value of the real property was to be ascertained by the City Clerk, and be appended to the petition, a certificate that the total number of persons assessed for property to be directly benefited was twenty-three,—that sixteen names were signed to the petition, that the total value of the assessed property was $520,182, and that the amount represented by the signers of the petition was $413,496, the Court, on an application to quash a by-law for local improvements, refused to go behind this certificate. *In re Michie and Toronto*, 11 U. C. C. P. 379; see also, *In re Montgomery and Raleigh*, 21 U. C. C. P. 381. "It is not objected that he (the Clerk) acted corruptly and fraudulently, and though as I gather from the unanswered statements in the relator's affidavit's, the City Clerk has fallen into an error,—an error easily accounted for, as his conclusions were drawn from the assessment roll only,—yet I think we cannot on that account annul the whole proceeding. . . . I am not to be understood as determining that he should have confined his inquiry to the assessment roll, when he was required to ascertain and finally determine the matter of number and value; but I think that, having acted as we must assume, *bona fide*, the Legislature intended his determination to be final, as the foundation for the by-law authorizing the improvement and imposing the special rate. *Re Michie and Toronto*, 11 U. C. C. P. 385, *per* Draper, C. J.; see further, note *d* to sub-s. 2. Where a city was authorized by one section of the Act, on the petition of two-thirds of the owners of abuting property, to make certain improvements in a street, and by a subsequent section power was conferred upon the council to order such improvements by a two-thirds vote of the council, it was held that, although proceedings relative to the improvements were commenced by petition from the property holders, yet, having been ordered by a two-thirds vote of the council, they were valid, although two thirds of the property

he may deem just; and the amount so charged for roads or agreed upon by arbitration shall be paid out of the general funds of the municipality or company, and the provisions of this Act relating to drainage, so far as applicable, shall apply to any such work or improvement constructed under this section; 48 V. c. 39, s. 29.

Cost of sewers.

613—(1) In ascertaining and determining the cost of draining any locality or making and laying or prolonging any common sewer, the council of any township, city, town or incorporated village, may estimate the cost of the construction of branch drains to the line of street, and include the cost of such branch drains in making the assessment for such drains or common sewers, as a local improvement pursuant to the last preceding section. 50 V. c. 29, ss. 48, 49.

(2) In any case where in order to afford an outlet for the sewerage and drainage of real property other than that fronting or abutting upon the street in which a sewer shall hereafter be constructed, such sewer shall be constructed of a larger capacity than that required for the efficient sewerage and drainage of the real property fronting or abutting upon the street, then, and in every such case, the council may impose a special assessment upon the other real property benefited by the construction of such sewer in the manner hereinafter provided by sections 618 and 619 of this Act. 51 V. c. 28, s. 33.

Assessment of corner lots, etc., for local improvements.

614. The council of every township, city, town, and incorporated village may, by by-law, provide an equitable mode of assessing for local improvements, works and services, corner lots, triangular or other irregular shaped pieces of land situate at the intersections or junctions of streets, having due regard to the situation, value and superficial area of such lots, as compared with adjoining lots and pieces of land assessable for such improvements, works and services, and may charge the amount of any allowance, made on any such lot or piece of land, on the other real property fronting on the improvements, or assume the same as a portion of the municipality's share of the work or improve-

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holders did not unite in the petition, for that the two-thirds vote of the council made the proceedings valid, notwithstanding any prior defects. *Indianapolis* v. *Mansur*, 15 Ind. 112; see further *Lafayette* v. *Fowler*, 34 Ind. 140; *McCormack* v. *Patchin*, 14 Am. 440.

ments; the said matters to be subject to appeal to the County Court Judge as already provided. 46 V. c. 18, s. 613; 50 V. c. 29, s. 48.

Refund of part of special rate for local improvements imposed on corner lots, etc.

615. It shall and may be lawful for the council of any township, city, town, or incorporated village by a two-thirds vote of the council to pass by-laws to remit and refund so much of the special rates imposed prior to the 30th day of March, 1885, on corner lots and irregular pieces of land for the construction of pavements and sidewalks under local improvement by-laws as may be necessary to equalize the assessment made on such property with the assessment made on adjoining properties with the same improvement or work, and to provide the amount of all rates so remitted or refunded by passing by-laws for borrowing money by the issue of debentures, or by including said amounts in the rate bills for the year; provided that no such remission or refund shall be made in any case where the work or improvement shall have been made or constructed more than four years before the passage of the by-law authorizing the refund or remission. 48 V. c. 39, s. 35; 50 V. c. 29, s. 48.

Completion of local improvements.

616. In any case when notice of a proposed improvement, work or service, to be paid for by special assessment as a local improvement, has been given by any council of any municipality pursuant to the provisions of chapter 174 of the Revised Statutes of Ontario, 1877, or of *The Consolidated Municipal Act, 1883*, or any amending Act or Acts, and no petition sufficiently signed has been presented to the said council or to the succeeding council against such proposed improvement, work or service and assessment within the time limited in that behalf by the said Acts, it shall be lawful for the said council, in the same or any succeeding year, to carry on the proposed work, improvement or service to completion, before making the assessment therefor; and such notice, so given, shall stand good as authority for undertaking any such work, improvement or service, and making such assessment or assessments, and passing all necessary by-laws, whether the same shall have been or shall be undertaken and completed by the council giving such notice, or by the council in any succeeding year. 49 V. c. 37, s. 40.

46 V. c. 18.

How proportion of cost of local improvements

617. Where the lands on either side of a street, lane, or alley in a city, town or incorporated village, in the opinion of

the council, are from any cause unfit for building purposes, and the council deem it inequitable to assess the same for local improvements at as high a rate as the building lots fronting on said street, lane or alley, the council shall, in all such cases, determine in what proportion the cost of any such improvement shall be borne by the lands on each side of said street, lane, or alley, respectively. 46 V. c. 18, s. 614. is to be determined in special cases.

618—(1) Where it shall, in the opinion of the council of any township, city, town or incorporated village, be deemed expedient and necessary to construct or repair bridges or culverts on any street, lane or alley, or to open up and extend any street, lane or alley within the limits thereof for the more immediate convenience or benefit of any locality within such limits, and the council is of opinion that from any cause it is inequitable to charge the whole of the cost of the improvement on the lands fronting thereon, the council shall determine what lands are benefited by such works or improvements, and the proportion in which the cost thereof shall be assessed against the lands so benefited, and also the proportion, if any, of the cost of the improvement, which shall be assumed by the township, city, town or incorporated village as its share thereof; provided always that the share or proportion of the cost of such improvement assumed by the municipality may be provided for by the issue of debentures upon the credit of the municipality at large in like manner as in the case of the share of the municipality of other local improvements: provided, also, that all assessments made under the above provisions shall be subject to an appeal to the Judge of the County Court in like manner as in the case of other special assessments for local improvements, under the provisions of this Act. 48 V. c. 39, s. 33; 50 V. c. 29, ss. 43, 48; 51 V. c. 28, s. 36. Cost of opening and extending streets.

(2) In any case when the council affirms by a two-thirds vote thereof that the constructing, erecting, or making of any bridge, culvert or embankment, benefits the municipality at large, and that it would be inequitable to raise the whole cost of such improvement or work by local special assessments, the council may pass a by-law for borrowing money by the issue of debentures upon the credit of the municipality at large to provide as the corporation's share of the cost of such improvement or work an amount not exceeding one-half of the whole cost thereof; and no such by-law shall require the assent of the electors before the final passing thereof. 50 V. c. 29, s. 43.

Assessment of lands benefited by improvements where land does not front on street on which improvement made.

619—(1) If in the case of the construction or repair of a bridge or culvert, or the opening up and extension of any street, lane, or alley, the council shall determine what real property other than than fronting or abutting upon the street, lane, or alley, whereon or wherein the improvement is made, or to be made, is specially benefited, and ought to be charged with a part of the cost thereof, and shall determine the proportion in which the cost of the improvement shall be assessed against the lands so benefited, the council shall assess and levy the proportion of the cost of the improvement chargeable against the lands benefited, but not fronting or abutting upon such street, lane or alley, by a frontage rate, in like manner as the same would be assessed and levied in the case of lands, fronting or abutting upon the street, lane or alley, whereon, or wherein the improvement is made or to be made. 48 V. c. 39, s. 34.

(2) Or, in the case of a township, the council may, by by-law, provide that the cost of the works therein specified may be assessed and levied by a special rate upon the lands benefited thereby, according to the proportion of benefit received therefrom instead of by a frontage rate, as hereinbefore provided; and where the owners of real property have constructed works or improvements which might have been constructed by the municipality as local improvements, the council may, upon the petition of three-fourths of the owners of lands to be benefited by the acquisition of such works or improvements representing at least two-thirds in value thereof acquire the same at a price to be fixed by agreement or by arbitration pursuant to this Act, and the purchase money therefor may be raised, assessed, and levied, as for local improvements, upon the real property benefited thereby, as above provided.

(*a*) The number of the owners petitioning for the said assessment, and the value of the real property which they represent, may be ascertained and finally determined in such manner and by such means as are provided by by-law in that behalf, subject to an appeal to the Judge of the County Court as in the case of other special assessments for local improvements. 51 V. c. 28, s. 37.

Council may permit owners to

620. The council may permit the owner or owners to build or improve the sidewalk in front of his or their lands, and any

street, lane or alley, within a township, city, town or incorporated village, under the direction of the council or an officer thereof appointed for that purpose, and according to such plans and regulations as the council may prescribe, in which case the owners or occupants of such lands shall be exempt from all taxes for improvements of a like nature so long as he or they shall keep the same in repair to the satisfaction of the council. 46 V. c. 18, s. 616; 50 V. c. 29, s. 48.

build or improve sidewalks in front of their lands.

621.—(1) For the purpose of enabling councils to avoid the necessity of making supplementary assessments, or refunding in case of over assessments, and of ascertaining the exact cost of any work or improvement done or constructed as a local improvement under the provisions of this Act, they may and they are hereby authorized and empowered to make agreements with any bank or any person or body corporate for temporary advances and loans until the completion of the work or improvement for meeting the cost thereof, and they may and they are hereby authorized and empowered, in their option, to make the special assessments for the cost thereof, after the work or improvement, as the case may be, shall have been completed, and to pass the necessary by-law authorizing the issue of debentures to repay the amount of the temporary loan or advance.

Power to borrow funds for local improvements.

(2) Every by-law for borrowing money shall provide for the repayment of the loan and the maturing of debentures to be issued pursuant to such by-law, within the probable life of the work or improvement for which such debt has been incurred, as certified by the engineer, or other proper officer to be appointed by the council for that purpose.

Time for repayment of loans.

(3) If, in any case, a debt has been incurred by the municipality for any work or improvement done or constructed under the provisions of this Act, and after the incurring of the said debt the special assessment for such work or improvement, or the by-law providing for borrowing money therefor, be set aside or quashed, either wholly or in part, on the ground of any irregularity or illegality in the making of such assessment or passing such by-law, it shall be lawful for the council, and they are hereby authorized, to cause a new assessment or assessments to be made, and to pass a new by-law, so often as may be necessary to provide funds for the payment of the debt so incurred for such work or improvement: provided always that nothing herein contained shall

Where special assessments are irregular, new assessments may be made.

be construed as authorizing any assessment to be made, or work or improvement to be undertaken, except the same be initiated in some one of the three methods by law provided, namely :

(*a*) Either on the report of the engineer or other sanitary officer, and of a committee of the council, recommending the proposed work or improvement for sanitary or drainage purposes adopted by the council ; or

(*b*) On a petition of the owners of the real property benefited, sufficiently signed ; or

(*c*) After due notice, as above provided, of the proposed assessment, and no petition of the owners of the real property benefited, against the proposed assessment, sufficiently signed, being presented to the council within the time limited therefor.

Property charged with local improvements to be exempt from general rates for same purpose.

(4) Any real property specially assessed by any council for any local improvement or work under this Act, and real property where such improvement or work has been done with moneys provided by the owners of such real property, and real property the owners of which have constructed their own works and improvements, which would otherwise have been constructed by the municipality as local improvements, shall be exempted by the council from any general rate or assessment for the like purpose, except the cost of works and improvements at the intersection of streets, and except such portion of the general rate as may be imposed to meet the cost of works and improvements opposite real property which is exempt from such special assessments, and the general rate which may be imposed to meet the cost of maintenance and repairs on works and improvements constructed under local improvement by-laws. 46 V. c. 18, s. 617.

By-laws need not be advertised, but notice of the sitting of the court of revision shall be served on owners, lessees, etc.

622.—(1) No by-law passed by the council of any township, city, town, or incorporated village, under the provisions of sections 569, 570, or 612 of this Act, shall require to be advertised or published by the said council in any newspaper, but a written or printed, or partly written and partly printed, notice of the sitting of the Court of Revision for the confirmation of every such special assessment shall be given to the owners, lessees, and occupants, or the agents of the owners, lessees, and occupants, of each parcel of real estate included in such by-laws and assessment. 46 V. c. 18, s. 618 (1) ; 50 V. c. 29, s. 48.

(2) Every such notice shall contain a general description of the property in respect of which the same is given, the nature of the proposed improvements, work or service, the estimated total cost thereof, the amount of the assessment on the particular piece of property, and the time and manner in which the same is payable, and shall be signed by the clerk or the assessment commissioner, or other officer to be appointed by the council for the purpose, and be mailed to the address of the person entitled to notice at least fifteen days before the day appointed for the sittings of the said Court, and ten days' notice shall also be given by publication in some newspaper, having a general circulation, of the time and place of the meeting of the said court, which notice shall specify generally what such assessment is to be for and the total amount to be assessed. (*l*) 46 V. c. 18, s. 618 (2); 50 V. c. 29, s. 44.

(*l*) It has been held that where a municipal corporation exercises the power to make local improvements and charge the cost thereof on the lands directly benefited thereby, the owners of such lands, if accessible by reasonable diligence, are entitled to reasonable notice of the meeting of the commissioners for assessing the cost, and this although the charter be silent on the subject. See *Dillon* on Municipal Corporations, 3rd ed. secs. 803, 804. Where the by-law of a municipal corporation provided that the clerk of the council should cause a notice to be left at the place of abode of each of the parties assessed for such improvement, that the assesment was made and the amount thereof, and that a by-law would be passed in accordance therewith unless appealed from as provided by law, the court, on the application of a person interested, who swore that he had no notice of the by-law until some time after it was passed, and that he first became aware of the particulars of it and of the proceedings on which it was based in February before the application to quash, refused to quash the by-law. *In re Michie* v. *Toronto*, 11 U. C. C. P. 379. "The objection is sustained in fact, as I understand the statements. But the provision requiring notice of intention to pass the by-law to be given or sent to parties affected by it is not statutory, nor is the validity of the by-law made dependent on provisions contained only in by-laws. And although the relator states in his affidavit that he had no notice of the by-law 'until some time after it was passed,' and that he first became aware of the particulars of it and of the proceedings on which it was based in February last, yet it is difficult to suppose that he was not aware long before that date that the stone sidewalk was being laid down, or that the work was of that character which was usually paid for by special local rate. This was enough to put any one on enquiry. Then he seems, from his own expression, to have become aware of the by-law some time before he became aware of its precise contents; but the knowledge of the first was notice of the second, and he then might have learned everything necessary to support a much earlier application to quash the by-law." *Per* Draper, C. J., *Ib.* 385. Notice

General description in by-laws under s. 612, sufficient where special rate is a frontage rate.

623.—(1) Where a by-law passed under the provisions of section 612 of this Act provides, or is intended to provide, that the special rate assessed thereunder shall be a frontage rate, it shall not be necessary to comply with the provisions of sub-section 1 of the said section, or to advertise or publish the by-law, or to comply with the provisions of the next preceding section of this Act, but it shall be sufficient if the by-law describe the street or place or part thereof whereon or wherein the local improvement is to be made by a general description thereof, stating the points between which it is to be made, and it shall not be necessary for such by-law to state the value of the real property ratable thereunder, or to impose a rate upon such real property by any description other than that hereinbefore mentioned.

(2) In cases to which the next preceding sub-section applies, the council shall procure a measurement of the frontage liable to the rate mentioned therein, and of the frontages exempt from taxation, and of the frontages of the several lots or parcels of land liable to such rate, and shall keep a statement of the same open for inspection in the office of the clerk of the municipality for at least ten days before the final passing of the by-law, and the council shall also cause to be inserted in a public newspaper published within the municipality, or in the county town, or in a public newspaper published in the nearest municipality in which a

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to "repave" held not sufficient where the assessment was for paving. *State* v. *Jersey City*, 3 Dutch (N. J.) 536. Notice of time and place for hearing objections to proposed improvement. *State* v. *Jersey City*, 1 Dutch (N. J.) 309; *State* v. *Jersey City*, 2 Dutch (N. J.) 464; *State* v. *Jersey City*, 4 Zabr. (N. J.) 662; *State* v. *Newark*, 1 Dutch (N. J.) 399; *State* v. *Elizabeth*, 2 Vroom (N. J.) 547. Requisites of such a notice. *Tufts* v. *Charlestown*, 98 Mass. 583; *Ottawa* v. *Macey*, 20 Ill. 413; *Simmons* v. *Gardiner*, 6 Rh. Is. 255; *Baltimore* v. *Bouldin*, 23 Md. 328. Where the legislature has made the giving of notice necessary, and provided a mode for giving such notice, that mode should be strictly followed. *Simmons* v. *Gardiner*, 6 Rh. Is. 255; *Scammon* v. *Chicago*, 40 Ill. 146; *Risley* v. *St. Louis*, 34 Mo. 404; *Hildreth* v. *Lowell*, 11 Gray (Mass.) 345; *Williams* v. *Detroit*, 2 Mich. 560; *State* v. *Elizabeth*, 1 Vroom. (N. J.) 365; *Durant* v. *Jersey City*, 1 Dutch. (N. J.) 309; *Norwich* v. *Hubbard*, 22 Conn. 587; *State* v. *Jersey City*, 4 Zabr. (N. J.) 662; *Dubuque* v. *Wooten*, 28 Iowa 571; *Palmyra* v. *Morton*, 25 Mo. 593. Failure, after notice, to object to an assessment before a city council, when it had the power to revise and correct or annul it, and direct a new assessment, was held to be a waiver of notice. *Ottawa* v. *Railroad Co.*, 25 Ill. 43; see also *State* v. *Jersey City*, 2 Dutch (N. J.) 444.

public newspaper is published, once a week for two successive weeks, a notice in the form following or to the like effect :

Take notice that a by-law is intended to be passed by the Municipal Council of the Corporation of the of for levying a frontage rate to pay for the (*describing the work*) constructed (*or* made) or to be constructed (*or* made) (*as the case may be*) on street, between (*describing the points between which the work has been or is to be made or constructed*) and that a statement shewing the lands liable to pay the said rate and the names of the owners thereof, so far as they can be ascertained from the last revised assessment roll, is now filed in the office of the Clerk of the Municipality and is open for inspection during office hours.

The cost of the work is $ of which is to be provided out of the general funds of the municipality.

A Court of Revision will be held on at for the purpose of hearing complaints against the proposed assessment or accuracy of the frontage measurements or any other complaint which persons interested may desire to make, and which is by law cognizable by the court.

Dated. *Clerk.*

(3) There shall be the same right of appeal from any such assessment to the Court of Revision, and from the Court of Revision to the county Judge, as is provided in section 569 of this Act, and the proceedings thereon shall, except as otherwise provided by this Act, be the same (as nearly as practicable) as in the case of appeals from ordinary assessments under *The Assessment Act*, and the Court of Revision and the County Judge shall respectively have the like jurisdiction, rights, and powers in respect to every such appeal as in the case of such last mentioned appeals. Rev. Stat. c. 193.

(4) The said statement, or the same as altered or varied by the Court of Revision or the County Judge upon appeal, shall be final and conclusive as to all matters therein contained. 48 V. c. 39, s. 38.

Property specially assessed to be exempt from general assessment for same purpose.

624.—(1) Any real property specially assessed by any council for any local improvement or work under this Act shall be exempted by the council from any general rate, or assessment for the like purpose, except the cost of works at the intersection of streets, and except such portion of the general rate as may be imposed to meet the cost of like works opposite real property which is exempt from such special assessment.

(2) Where a local improvement or service is petitioned for, and the petition is by two-thirds in number of the owners

of the real property fronting or abutting upon the street or place wherein or whereon such improvement or work is proposed to be done or made, the exemption may be for a specified period named in the petition and agreed to by the council.

(3) Or if, either with or without naming any period for such exemption, the petition requests an arbitration, the council may accede to the proposal for an arbitration.

(4) In case the matter is to be determined by arbitration, a sole arbitrator shall be chosen for the purpose by the County Court Judge, unless some person or persons is or are agreed to in that behalf by the petitioners and the council.

(5) Where, by reason of a special assessment, the owners are exempted from a general rate, for the like purpose, as aforesaid, the council shall, from year to year, by by-law directing the general rate of assessment, or by some other by-law, state what proportion of the general rate is for purposes for which there is such special assessment in any part of the municipality, and shall state the same in such manner as may give effect to this section.

(6) Until a by-law is passed containing such statement, none of the money raised by general rate on real property specially assessed or rated for any work or service hereafter executed shall be applied to any work or service of the same character in any part of the municipality. 46 V. c. 18, s. 619.

By-laws directing improvements to be made by local assessment.

625.—(1) The council of any township, city, town, or incorporated village may, by a by-law passed with the assent of the electors, according to the provisions of this Act, direct that all future expenditure in the municipality for the improvements and services, or for any class or classes of improvement or service, for which special provisions are made in sections 612 and 629, shall be by special assessment on the property benefited, and not exempt by law from assessment.

Repeal of by-laws.

(2) After such a by-law has been passed in manner aforesaid, it shall not be repealed without the like assent of the electors; and, in case of such repeal, the preceding section, with respect to freedom from any general rate or assessment of property which is subject to a special rate, shall apply to all property which had been specially rated or assessed for such improvement or service, while the repealed by-law was in force.

The time the exemption is to cease, is to be determined by arbitration, and the arbitrator is to be appointed by the County Judge, on the application of the council. 46 V. c. 18, s. 620; 50 V. c. 29, s. 48.

Repairing and cleaning streets.

(3) Notwithstanding anything contained in sub-section 3 of section 612, after such a by-law has been passed in manner aforesaid, the council may pass a by-law or by-laws dividing the municipality into certain areas, districts or sections within which the streets or parts of streets may be maintained, repaired, cleaned, cleared of snow and ice, watered, swept, lighted and the grass therein cut and trees therein trimmed, and may impose a special rate upon the assessed real property therein, according to the frontage thereof, in order to pay any expenses incurred in maintaining, repairing, cleaning, clearing of snow and ice, watering, sweeping and lighting such streets or parts of streets, and cutting grass and trimming trees therein, or for any one or more of such services. 48 V. c. 39, s. 30.

Assessment of places of worship for local improvements.

626. With respect to land on which a place of worship is erected, and land used in connection therewith, the municipal council may, by the by-law to be passed in that behalf, require the corporation, trustees, and other persons in whom is vested any such property, and the said property, to be assessed for any local improvement in the same manner, and to the same extent, as the other owners and land benefited by the improvement, in the following cases, namely:

1. In case a by-law is passed under the preceding section;

2. Or in case no such by-law is passed, but two-thirds of the owners of the real property to be benefited by the proposed improvement (excluding such corporation, trustees or other persons aforesaid), representing at least one-half in value of the remaining property, petition the council to undertake the said improvement;

3. Or in case no such by-law is passed as aforesaid, but the said corporation, trustees or other persons, and two-thirds of the owners of the real property to be benefited by the proposed improvement (including the said corporation, trustees, or other persons), representing at least one-half in value of the property, including the said property so vested in the corporation, trustees, or other persons aforesaid, petition the council for the said improvement. 46 V. c. 18, s. 621.

Certain part of improvements may be charged on general rates.

627—(1) In case of a special assessment on property benefited by local improvement, the council of the municipality (if they think fit) may, by by-law, provide for constructing, at the expense of the general funds of the municipality, such part of the local improvement as is situate upon or in that part of any street, lane, alley, public place, or square, which is intersected by any other street, lane, alley, public place, or square, or as would otherwise fall on property exempt from assessment: and the council may provide for the cost in the general rates or taxes for the year, or by the issue of debentures, or in such other manner not inconsistent with the provisions of this Act, or any special Act, as to said council may seem best, and subject to such by-laws as the council may pass in that behalf.

Provisions as to "Local Improvement Debentures."

(2) The by-law authorizing the issue of the debentures need not be submitted for the assent of the electors of the municipality; and the debentures being issued to pay for that part of the work payable by local assessment may, if the council thinks fit, be issued as a series distinct from those required to pay for that part which is to be borne by the general funds of the municipality, or all the debentures required for the work may be issued in one series, as "Local Improvement Debentures." This sub-section shall be deemed declaratory of the law on and from the 5th day of March, 1880. 46 V. c. 18, s. 622.

Assent of electors not required to by-laws for raising municipality's share of cost of local improvements.

628—(1) The council of any township, city, town, or incorporated village may pass all by-laws necessary, from time to time, to raise loans and borrow moneys required for its share of any local improvements and works, on the credit of such township, city, town, or incorporated village at large; and it shall not be necessary to obtain the assent of the electors of such township, city, town, or village to the passing of any such by-law under the provisions of this Act, any special or private Act in that behalf to the contrary notwithstanding; provided always that nothing in this section contained shall be construed as authorizing an extension of the general debt of such township, city, town, or village beyond the limits thereof fixed by any Act limiting the same.

(2) It is hereby declared that the debentures issued under local improvement by-laws on the security of special assessments therefor form no part of the general debt of any such municipality, within the meaning of any such last

above-mentioned Act, and it shall not be necessary to recite the amount of such local improvement debt so secured by special rates or assessments in any by-law for borrowing money on the credit of the township, city, town, or incorporated village at large as aforesaid, but it shall be sufficient to state in any such by-law, that the amount of the general debt of the municipality as therein set forth is exclusive of local improvement debts, secured by special Acts, rates or assessments. 46 V. c. 18, s. 623; 50 V. c. 29, s. 48.

Sweeping, Lighting, and Watering Streets.

Sweeping, lighting and watering streets.

629—(1) The council of every township, city, town and incorporated village may (*m*) pass by-laws for raising, upon the petition of at least two-thirds of the freeholders and householders resident in any street, square, alley, or lane, representing in value one-half of the assessed real property therein, (*n*) such sums as may be necessary for sweeping, watering or lighting the street, square, alley, or lane, by means of a special rate on the real property therein according to the frontage thereof, or according to the assessed value thereof when only such latter system of assessment shall have been adopted by a three fourths vote of the full council; (*o*) but the council

(*m*) *May* discretionary; see note *x* to sec. 534.

(*n*) See note *r* to sub-s. 9, sec. 612.

(*o*) It is plain that what the Legislature authorizes is, that the power of the council to impose a rate for the purposes indicated is to be exercised *only* by *by-law*, and that such by-law should in every case be passed subsequent to and consequent upon the presentation of the required petition praying for the passage of the particular by-law, and after the fullest opportunity had been given to every ratepayer to be affected by the by-law to object to its being passed. *Per* Gwynne, J., in *Morell* v. *Toronto*, 22 U. C. C. P. 323, 326. The petition may be that of *a portion* only of a street, asking the corporation to sweep, water or light that portion. *In re Platt and Toronto*, 33 U. C. Q. B. 53; see also, *Creighton* v. *Scott*, 14 Ohio, St. 438; *St. Louis* v. *Clemens*, 49 Mo. 552. But an application to sweep, water or light a *whole* street can only be legally granted when made by two-thirds of the property owners on the whole street. So if the corporation, upon a petition of the property owners of [illegible] of a street, sweep, water or light the *whole* (otherwise than in th[illegible]ercise of their general powers; see notes *p* to sub-s. 2, and *q* to sub[illegible]3), the by-law would be void. *Swann* v. *Cumberland*, 8 Gill (1[illegible].) 150; *McGonigle* v. *Alleghany*, 44 Pa. St. 118. The by-law will be o[illegible]n to objection if it do not state the amount to be raised and levied. *In re Platt and Toronto*, 33 U. C. Q. B. 57. But where the application to quash the by-law on such an objection was not made till all the work authorized had been done, and the only effect of quashing it would have been

may charge the general corporate funds with the expenditure incurred in such sweeping, watering, or lighting as aforesaid. (*p*) 46 V. c. 18, s. 624 (1); 50 V. c. 29, ss. 45, 48.

Special rate may be imposed therefor.

(2) The council may also, by by-law, define certain areas or sections within the municipality in which the streets should be watered, swept, and lighted and may impose a special rate upon the assessed real property therein, according to the frontage thereof, in order to pay any expenses incurred in watering, sweeping, or lighting such streets. (*q*) 46 V. c. 18, s. 624 (2).

Cutting grass, etc.

(3) The council may also include in either of the foregoing by-laws the cutting of grass and weeds, and trimming the trees or shrubbery on any such street, square, alley, or lane, and otherwise cleaning the same. 48 V. c. 39, s. 31.

Removal of snow, ice, etc.

(4) The council may also, by by-law, define certain areas or sections within the municipality in which all snow, ice, and dirt and other obstructions shall be removed from the sidewalks, streets, lanes, or alleys in such area or sections, and may impose a special rate upon the real property therein, according to the frontage thereof, in order to pay any expenses incurred in removing such snow, ice, dirt, or other obstruction. 50 V. c. 29, s. 46.

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the passage of another by-law to remedy the defect, the Court, in the exercise of its discretionary power, refused to quash the by-law. *Ib.* It is not necessary in such a by-law to name the day when it shall take effect. *Ib.*

(*p*) A municipality may, but is not bound to, light a highway: see *Randall* v. *Eastern R. W. Co.*, 8 Am. 327. But where the corporation does light a street and does it so negligently that a person is injured in consequence by falling into an excavation the character of the light may be shewn as one of the elements to establish negligence. *Freeport* v. *Isbell*, 25 Am. 327. It is in the discretion of the council, under this section either to charge the general corporate funds with the expenditure, or to charge only the freeholders and householders whose land fronts on the street, &c. The latter course cannot be legally adopted unless there be the petition made necessary by the former part of this section.

(*q*) It would seem that no petition is necessary to the exercise of the power here conferred. That power is to define certain areas or sections within the municipality in which streets should be watered, swept or lighted, and to impose a special rate upon the assessed real property therein, according to the frontage thereof, to pay the expenses incurred.

DIVISION II.—TOWNSHIPS AND VILLAGES.

Light and Water. Sec. 630.

Lighting and water-works.

630—(1) In addition to the powers conferred upon the councils of townships and incorporated villages by section 612 to 628, both inclusive, of this Act, the council of any such township or village, under and subject to the provisions of the said sections, may pass by-laws providing for lighting, or for the construction of water works for the purpose of fire protection.

(2) The said council may, by the same or any subsequent by-law, define by metes and bounds, or otherwise, what real property will be immediately benefited by the proposed improvement, and is to be charged with the cost thereof, and may also, by such by-law, make provision for assessing and levying on the property so defined the cost of managing and maintaining the said works.

(3) Sub-section 3 of section 612 of this Act, shall not apply to any works constructed under the powers by this section conferred. 48 V. c. 39, s. 32; 50 V. c. 29, s. 48.

DIVISION III.—COUNTIES.

Special rates by County Councils for local improvements in Townships. Secs. 631-633.

Special rates for local improvements.

631. The council of every county shall have power to pass by-laws (*r*) for levying by assessment on all ratable property within any particular part of one or parts of two townships to be described by metes and bounds in the by-law, in addition to all other rates, a sum sufficient to defray the expenses of making, repairing or improving any road, bridge, or other public work, lying within one township or between parts of such two townships, and by which the inhabitants of such parts will be more especially benefited but this section shall not apply to any road, bridge or other public works within the limits of any town or incorporated village. (*s*) 46 V. c. 18, s. 625.

(*r*) See note *x* to sec. 534.

(*s*) Roads, bridges, or other public works *within* the limits of any town or incorporated village are vested in the local corporation. Sec. 527.

Proceedings to obtain by-law for such improvements.

632. No by-law under the last preceding section shall be passed, except—

1. Upon a petition signed by at least two-thirds of the electors who are rated for at least one half of the value of the property within those parts of such township which are to be affected by the by-law ; (*t*) nor

Notice to be posted up, and published for three weeks.

2. Unless a printed notice of the petition, with the names of the signers thereto, describing the limits within which the by-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the township, and at the places for holding the sittings of the council of each township, whether it be within such parts or not, and also by inserting the same weekly for at least three consecutive weeks in some newspaper (if any there be), published in the county town, or if there is no such newspaper, then in the two newspapers published nearest the proposed work. 46 V. c. 18, s. 626.

Power to pass by-laws acquiring roads, etc., lying within one or more townships, etc., and to levy special rate for improvement thereof.

633—(1) A county council may, by by-law, assume or acquire any road, bridge, or other public work, lying within or adjacent to one or more townships or incorporated towns or villages, and may, by by-law raise by way of loan, a sum of money for the improvement of such road, bridge, or public work, to be repaid by a special assessment on all the ratable property within the municipalities which shall be immediately benefited by such road, bridge, or public work. 46 V. c. 18, s. 627 (1) ; 49 V. c. 37, s. 34.

Particulars which are to be stated in the by-law.

(2) Such by-law shall state the amount to be raised for such work, and shall define the municipalities forming the portion of the county municipality to be affected by the by-law, and the portion of work to be performed in each municipality, and shall provide for the raising of the said amount by the issue of debentures of the county, payable in twenty years, or by equal annual instalments of principal, with interest, and shall provide for assessing and levying upon all the ratable property, lying within the section defined in such by-law, an annual special rate sufficient for the payment of the principal and interest of the debentures.

By-law to be submitted to electors in

(3) The by-law shall, if approved by a majority of the representatives in the county council of the municipalities which

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(*t*) See note *k* to sub-s. 9 of sec. 612.

are defined in the said by-law be submitted to the vote of the qualified ratepayers in the portion of said county to be affected by said by-law who are entitled to vote on money by-laws. portion of county interested.

(4) In case there should be a majority of votes cast against the by-law in any one or more of the municipalities mentioned therein, although the by-law be carried, then the same shall only apply to those municipalities in which it has received a majority of the votes cast, and shall not affect the other municipalities mentioned, in any way, and the amount of money mentioned in the by-law to be raised by way of loan, shall be reduced by the proportionate amount which the said municipality or municipalities, giving a majority of votes against the by-law, would have been required to pay under the by-law. By-law only to apply to those municipalities in which it has a majority of votes.

(5) In case there should be a majority of votes cast against the by-law in any one or more municipalities mentioned therein, although the by-law be carried, then upon the approval of the majority of the representatives in the county council of the municipalities which have given a majority of votes in favour of the by-law, the same may be read a third time and passed by the county council, or dropped altogether ; but in case the by-law is finally passed, only the representatives in the county council of those municipalities giving a majority in favour of the by-law, and to be affected by the same, shall have any voice in reference to the expenditure of the money to be raised thereby. By-law, if carried in some municipalities only, may be passed or dropped.

(6) In all other respects the voting on the by-laws, and the passing and subsequent proceedings thereon, shall be in accordance with the provisions of this Act. 46 V. c. 18, s. 627 (2-6). General provisions to apply to voting, etc

(7) Cities and towns separated from the county may, with the approval of the ratepayers qualified to vote on money by-laws, pass similar by-laws to assist in the purchase of any toll roads, in which the cities or separated towns may be interested, or may pass by-laws abolishing the market fees charged by them, on condition that certain toll roads therein named are made free. 49 V. c. 37, s. 34, *part.*

TITLE IV.—POWERS OF MUNICIPAL COUNCILS AS TO RAILWAYS.

Aiding railways by taking stock, etc. *Sec.* 634.
When head of Council to be a Director ex-officio. *Sec.* 635.

Townships may permit railways to be constructed on highways, etc. Sec. 636.
Grouping clauses repealed. Sec. 637.

By-laws may be made for

634. The council of every county, township, city, town, and incorporated village (*a*) may pass by-laws—

(*a*) The powers conferred are in general discretionary, not obligatory. See note *x* to sec. 534. The constitutional right of the Legislature to authorize municipal bodies to aid trading corporations, such as railways, and to tax the people for aid, is in the United States a subject of grave judicial conflict. Strong ground was taken by Chief Justice Dillon against the power in a very able and exhaustive judgment delivered by him in *Hanson* v. *Vernon*, 27 Iowa 28; 1 Am. 215. Referring to *Dubuque County* v. *Dubuque and Pacific R. W. Co.*, 4 G. Green (Iowa) 1, where the majority of the court held otherwise, he said, "Disaster, the child of extravagance and debt, and dishonour the unbidden companion of bankruptcy, are the bitter but legitimate consequences of that decision, and 'the end is not yet.' In every other State in which a similar decision was made, similar consequences ensued." He admits the constitutional right of eminent domain, but says, though in some respects kindred, it and the taxing power are essentially different. Similar ground was taken against the constitutionality of such Acts in *Whiting* v. *Sheboyan and Fond du Lac R. W. Co.*, 25 Wis. 167; 3 Am. 30; and *The People ex rel. Detroit and Howell R. W. Co.* v. *Salem* 20 Mich. 452; 4 Am. 400. On the other hand, equally strong ground is taken and equally able judgments have been delivered in favour of the constitutionality of such Acts, in *Sharpless* v. *Philadelphia*, 21 Pa. St. 147; *Ex parte Selma and Gulf R. W. Co.*, 45 Ala. 696; 6 Am. 722; and *Stewart* v. *Supervisors of Polk County*, 1 Am. 238. In the last mentioned case, Mr. Justice Millar says, "The question of the constitutional power of the Legislature to authorize municipal Corporations to aid by local tax in the construction of railroads, within the territory of such municipal corporations, has been before the highest judicial tribunal of at least twenty-one of the States, and the Supreme Court of the United States, and in every instance the power has been confirmed until quite recently in the Supreme Courts of Michigan and Wisconsin, and in this Court in *Hanson* v. *Vernon*." He concludes his judgment by saying, "We find that upon principal and reason there is the same authority for the exercise of the sovereign power of taxation in aid of the construction of railroads that there is for the exercise of the right of eminent domain, and that this view is sustained by an overwhelming weight of authority." See further, *Walker* v. *City of Cincinnatti*, 8 Am. 24; *Commissioners of Leavenworth County* v. *Millar*, 12 Am. 425; *Chicago, Danville, and Vincennes R. W. Co.* v. *Smith*, 14 Am. 99. But on one point the Judges in the United States are all agreed with unusual unanimity, and that is that municipal corporations have *no implied power* to aid railway companies. *Aurora* v. *West*, 22 Ind. 88; *Starin* v. *Genoa*, 23 N. Y. 439; *Acheson* v. *Butcher*, 3 Kansas 104; *Bank* v. *Rome*, 18 N. Y. 38; *Bridgeport* v. *Housatonuc R. W. Co.*, 15 Conn. 475; *Marsh* v. *Fulton*, 10 Wall. (U. S.) 676; *Nichol* v. *Nashville*, 9

1. For subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by an incorporated railway company to which section 18 of the statute 14 and 15 Victoria, chapter 51, or sections 75 to 78 inclusive of chapter 66 of the Consolidated Statutes of Canada, or the equivalent sections of *The Railway Act of Ontario*, have been or may be made applicable by any special Act; (*b*)

Taking stock in certain railways or guaranteeing debentures. 14, 15 V. c. 51, s. 18. C. S. C. c. 66, ss. 75-78. Rev. Stat. c. 170, s. 39.

2. For endorsing or guaranteeing the payment of any debenture to be issued by the company for the money by them borrowed, and for assessing and levying from time to time, upon the whole ratable property of the municipality, a sufficient sum to discharge the debt or engagement so contracted;

For guaranteeing the payment of debentures, etc.

3. For issuing, for the like purpose, debentures payable

For issuing debentures, etc.

Hump. (Ten.) 252; *St. Louis* v. *Alexander*, 23 Mo. 483; *Jones* v. *Mayor, &c.*, 25 Ga. 610; *Duanesburgh* v. *Jenkins*, 40 Barb. (N. Y.) 574; *French* v. *Teschemaker*, 24 Cal. 518; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. (N. S.) 327; *Railroad Co.* v. *Evansville*, 15 Ind. 395; *Aurora* v. *West*, 9 Ind. 74; *Lafayette* v. *Cox*, 5 Port. (Ind.) 38. "I incline to the opinion that in all such transactions the substance rather than the form should be considered; and if in substance the matter is *intra vires* it should not, on account of defective form, be held *ultra vires* unless the form used is prohibited by the enabling statute or by law." *Per* Cameron, C. J., in *Bickford* v. *Chatham*, 10 O. R. 257.

(*b*) The subscription for stock may be conditional, *Higgins* v. *Whitby*, 20 U. C. Q. B. 296; and if the amount subscribed be paid either directly to the company, or to the contractors of the company at their request, the liability of the municipality is thereby extinguished. *Woodruff* v. *Peterborough*, 22 U. C. Q. B. 274. It would seem that a by-law authorizing subscription for stock, especially if it authorize the issue of debentures, is the contracting of a debt not payable in the same municipal year, so as to demand the formalities required by sec. 340. *In re Billings and Gloucester*, 10 U. C. Q. B. 273; *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 183, 201; *Canada Atlantic R. W. Co.* v. *Cambridge*, 14 A. R. 299. The legislature may, it seems, at any time before the subscription is paid, annul the proceeding, and authorize the municipal corporation to withdraw its subscription, and release its right to stock. *People* v. *Coon*, 25 Cal. 635. So it would seem that defective subscriptions for stock may be ratified by the legislature in all cases where the legislature could originally have conferred the power. *Keithsburg* v. *Frick*, 34 Ill. 405; *Copes* v. *Charleston*, 10 Rich. Law (S. C.) 491; *McMillen* v. *Bayley*, 6 Iowa, 304, 364; *Gelpeke* v. *Dubuque*, 1 Wall. (U. S.) 220; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. (U. S.) 327; *Bass* v. *Columbus*, 30 Ga. 845; *City* v. *Lamson*, 9 Wall. (U. S.) 477.

at such times, and for such sums respectively, not less than $20, and bearing or not bearing interest as the municipal council thinks meet ; (c)

Bonuses.

4. For granting bonuses to any railway company in aid of such railway, and for issuing debentures in the same manner as is in the preceding sub-section provided for raising money to meet such bonuses ; (d)

Form of debenture.

5. For directing the manner and form of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned respectively ;

(c) No council is allowed, unless specially authorized so to do, to give any bond, bill, note, debenture, or other undertaking, for the payment of a less amount than $100. Sec. 414. This clause forms an exception.

(d) A by-law of a county council in aid of a railway to the extent of $20,000, by way of bonus, which had not been submitted to the ratepayers was quashed. *Ex rel. Clement* v. *Wentworth*, 22 U. C. C. P. 300. It would seem that the general intention of the legislature is that all assistance granted to a railway company should be with the assent of the electors before granted, and that the making of direct advances from moneys actually in hand to aid a railway is not contemplated. *Per* Hagarty, C. J., in *In re Bate and Ottawa*, 23 U. C. C. P. 35. "If we assume for this argument that the council may grant a bonus to a railway, consisting of unappropriated moneys in hand we still think the legislature meant, and have so expressed their meaning, that the bonus must be to the railway company, and not to some individual to repay him for advances to, or services rendered to such company." *Ib.*, 36. A by-law granting $1,000 to an individual in consideration of his having, at the instance of the corporation, advanced that amount in aid of a railway company, was therefore quashed. *Ib.* A bonus may be granted to a dominion railway. *Canada Atlantic R. W. Co.* v. *Cambridge*, 11 O. R. 392 ; *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 183, 201 ; 12 A. R. 234. Where a municipality has legally a right to pass a by-law granting aid to a railway company, it would be premature to apply to restrain the submission of the by-law to the ratepayers, as they may disapprove of it. *Vickers* v. *Shunia*, 22 Grant 410 ; but where there is no power to pass the by-law, the attempt to pass it may be restrained. *Helm* v. *Port Hope*, 22 Grant 273. A council may refuse to pass a by-law granting aid to a company where the passage of the by-law has been procured by bribery. *Re Langdon*, 45 U. C. Q. B. 47. As to the performance of conditions imposed on the company, see *Luther* v. *Wood*, 19 Grant 353. Where the by-law does not limit a time for the completion of the railway, there is an implied condition that the work shall be completed or the bonus earned within the time fixed by the charter. *Canada Atlantic R. W. Co.* v. *Ottawa*, 8 O. R. 201.

But no municipal corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid, unless the by-law before the final passing thereof receives the assent of the electors of the municipality in manner provided by this Act. (*e*) 46 V. c. 18, s. 628. *See also Rev. Stat.* c. 170, sec. 39 (3), and sec. 320 *ante.* Assent of electors necessary.

635. In case any municipal council subscribes for and holds stock in a railway company under the next preceding section to the amount of $20,000 or upwards, (*f*) the head of the council shall be *ex-officio* one of the directors of the company, in addition to the number of directors authorized by the special Act, and shall have the same rights, powers, and duties as the other directors of the company. 46 V. c. 18, s. 629. *See also Rev. Stat.* c. 170, s. 39 (4). In certain cases, head of council to be *ex officio* a director.

635 (*a*)—(1) In addition to the powers conferred by section 634 a portion of a township municipality which may be interested in securing the construction of a railway, or through or near which any such railway may pass or be situated, may aid the said railway by granting money or debentures by way of bonus or gift, or by way of loan to such railway under and subject to the provisions hereinafter contained, provided always that such aid shall not be given except after the passing of a by-law for the purpose, and the adoption of such by-law by the qualified ratepayers of the said portion of the municipality in the manner provided in respect to granting aid by way of bonuses to railways. Aid to railways by portions of townships.

(2) Before a by-law is submitted under this section to the vote of the ratepayers a petition shall be presented to the council expressing the desire to aid the railway, and stating in what way and for what amount, and defining the portion of the township to be charged by metes and bounds, or lots and concessions, and shall be signed by fifty freeholders resident in such portion of the township, being duly qualified voters under this Act.

(3) The by-law shall in each instance provide:

(*a*) For raising the amount petitioned for in the portion

(*e*) See *Ex rel. Clement* v. *Wentworth*, 22 U. C. C. P. 304; see further, *Attorney-General* v. *Mayor of Leeds*, L. R. 5 Chy. 583.

(*f*) A municipality which has subscribed for stock in a railway company, and thereby become a stockholder in the company, has the same rights as to the management of the affairs of the company as any ordinary stockholder. *Harublewes* v. *Dudin*, 2 Withrow, 86.

of the municipality mentioned in the petition by the issue of debentures of the municipality, and shall also provide for the delivery of the debentures or the application of the amount to be raised thereby as may be expressed in the said by-law.

(b) For assessing and levying upon all ratable property lying within the portion of the municipality defined in said by-law, an annual special rate sufficient to include a sinking fund for the repayment of the said debentures within twenty years with interest thereon payable yearly, or half yearly, which debentures the councils, reeves, and other officers of the municipality are hereby authorized to execute and issue in such cases. 51 V. c. 28, s. 34.

By-laws authorizing branch railways, tram and other railways along highways. Rev. Stat. c. 170.

636. The council of every township may pass by-laws for authorizing any railway company, in case such authority is necessary, to make a branch railway on property of the corporation, or on highways, under such conditions as the council sees fit, and subject to the restrictions contained in *The Railway Act of Ontario*, and any other Acts affecting such railway; and may also pass by-laws to authorize companies or individuals to construct tramways and other railways along any highway on such terms and conditions as the council sees fit. (*g*) 46 V. c. 18, s. 630.

Grouping clauses in railway Acts passed on or before March 5, 1880, repealed.

637. So much of any enactment in private and other Acts, passed on or before the 5th day of March, 1880, as authorizes or provides for the grouping or joining together of municipalities or a municipality, or part of any municipalities or municipality with part of another municipality or parts of other municipalities, for the purpose of granting municipal aid to any railway or railway company, is hereby repealed and declared to be inoperative. 46 V. c. 18, s. 631.

(*g*) See sub-s. 36 of sec. 496. Where a railway company constructed their road along a highway without any formal application for leave, the council of the municipality, having subsequently passed a resolution notifying the company to fill up the ditch on both sides of the railway and to put down proper crossings, were held to have thereby admitted that the company was lawfully in occupation of the highway. *Pembroke* v. *Canada Central R. W. Co.*, 3 O. R. 503. The leave of the municipal authorities required by 31 V. c. 68 (Dom.), before a railway is carried along an existing highway, may be granted before, during, or after the construction of the railway, and need not necessarily be given by by-law. *Ib.*

PART VIII.

Police Villages.

Div. I.—Formation of.
Div. II.—Trustees, and Election of.
Div. III.—Duties of Police Trustees.

Division I.—Formation of.

Existing Villages continued. Sec. 638.
New Police Villages—how formed. Sec. 639.

Existing police villages continued.

638. Until otherwise provided by competent authority, every existing police village (*a*) shall continue to be a police village, with the boundaries now established. 46 V. c. 18, s. 632.

New police villages.

639. On the petition of any of the inhabitants of an unincorporated village, the council or councils of the county or counties within which the village is situate (*b*)

(*a*) There is in general no difficulty in defining the boundaries of an incorporated city, town, or village, because the statute, proclamation, or other authority incorporating such a municipality usually prescribes the boundaries. See *Irwin* v. *Bradford*, 22 U. C. C. P. 18. But in the case of a town or village not so incorporated, or not having limits otherwise assigned to it, there must of necessity be uncertainty as to the boundaries. A police village may be set apart by a county council with such limits as are deemed expedient. Sec. 639. The boundaries of a village or hamlet fluctuate from day to day with the growth of houses, but the effect of this section will be to restrict the boundaries, notwithstanding the growth, until such boundaries be otherwise established. The boundaries declared are the boundaries *now* established. See *Reg.* v. *Cottle*, 16 Q. B. 412; *Milton-next-Sittingborne Commissioners* v. *Faversham*, 10 B. & S. 548, note; see further, note *c* to sec. 639.

(*b*) The words "unincorporated village," as here used, may be looked on as the word "town" or "village" used in several English Acts of Parliament to indicate a collection of houses. It is a matter of some difficulty to give a definition of "town" or "village," when not incorporated, so as to cover all cases. In Co. Litt. it is said that "a place cannot be a town in law unless it hath, or, in times past hath had a church, and celebration of Divine service, sacraments, and burials." (115 B.) If the words "blacksmith's shop, tavern, and store," were substituted for the words "a church," &c., the definition of Coke would not be far short of a hamlet or little village as commonly understood in this country. In *Reg.* v.

may, by by-law, erect the same into a police village, and assign thereto such limits as may seem expedient. (*c*) 46 V. c. 18, s. 633.

Fisher, 8 C. & P. 612, Patteson J., said, "It is very difficult to define what is a town in ordinary meaning. It varies from day to day by the erection of new houses." In *Elliott* v. *South Devon R. W. Co.*, 2 Ex. 729, Parke, B., said, "It would appear that the word town is not to be understood in its strict legal interpretation as a township having a church or a constable, but a place containing a number of houses congregated together—an inhabited spot where the occupation is continuous." Alderson, B. (in the same case), said, "What the walls of towns were in ancient times, that is a boundary, continuous buildings are now. By continuous buildings I do not mean buildings which touch each other, but buildings so reasonably near that the inhabitants may be considered as dwelling together. Within the ambit surrounded by such houses is town and when the railway passes through that ambit it passes through town." *Ib.* 730, 731. In *Regina* v. *Cottle*, 16 Q. B. 412, 416, Russell Gurney charged the jury that a town is generally a congregation of houses," and that the jury were to say whether the spot in question was surrounded by houses so reasonably near that "the inhabitants might be fairly said to dwell together." Referring to this charge, Lord Campbell in the (same case) said that the learned Recorder had with much felicity comprised, in a few words all that was material in the language of the Barons of the Exchequer, as to the definition of town, in *Elliott* v. *South Devon R. W. Co.* *Ib.* 420. His definition was also approved of in *Milton-next-Sittingborne Commissioners* v. *Faversham*, 10 B. & S. 548; and *London and South Western R. W. Co.*, L. R. 4 H. L. 610. In the last mentioned case lands near Teddington, in Middlesex, situated close to the railway station but not continuously built upon, were held not to be lands within the town. "That definition amounts to this; that where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living in as it were in the same town or place, continuously there—for the purposes of the Railway Acts, and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition, the place may be said to be a town. *Per* Lord Hatherley, *Ib.* 615. In another case, Vice-Chancellor Stuart said: "Four or five surveyors and the solicitor of the company appear to have sworn that they consider Teddington a town; but none of them state anything in support of that opinion except that there are in Teddington a number of shops, such as milliners, grocers, bakers, butchers, and the like; and from such reasoning they arrive at the conclusion that Teddington is a town. The fallacy of this conclusion, however is made quite apparent from the maps and plans which have been referred to in the case; and from which no man of ordinary sense and discernment can fail to see that Teddington is not anything more than what is *usually and properly called a village.*" *Blackmore* v. *London and South Western R. W. Co.*, 19 L. T. N. S. 5.

(*c*) The power is by by-law to erect the same into a police village, *and* assign thereto "such limits as may seem expedient." It is a

DIVISION II.—TRUSTEES, AND ELECTION THEREOF.

Existing Trustees Continued,. *Sec.* 640.
Trustees three in number. *Sec.* 641.
Qualification required for. *Secs.* 642, 643.
Electors, who are. *Sec.* 644.
Election, where to be held. *Secs.* 645, 647.
Returning Officer, how appointed. *Sec.* 645.
Election not to be held in a Tavern. *Sec.* 647.
Nomination, how conducted. *Secs.* 648-650.
Polling, how conducted. *Secs.* 651-655.
Powers of Returning Officer. *Sec.* 656.
Tenure of Office. *Sec.* 657.
Return of Voter's Lists, etc. *Sec.* 658.
Vacancies, how filled. *Sec.* 659.
Inspecting Trustees, how appointed. *Sec.* 660.

Present trustees continued.

640. The trustees of every police village existing when this Act takes effect, (*d*) shall be deemed the trustees respectively of every such village as continued under this Act. (*e*) 46 V. c. 18, s. 634.

Number of trustees

641. The trustees of every police village shall be three in number. (*f*) 46 V. c. 18, s. 635.

Qualification of trustees.

642. The persons qualified to be elected police trustees shall be such persons as reside within the police village or within two miles thereof, (*g*) and are eligible to be elected township councillors, and are qualified in respect of property for which they are rated in such police village to the amount required so to qualify them. (*h*) 46 V. c. 18, s. 636.

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legislative power. The council should, in the same by-law, name the place in the village for holding the first election, and the returning officer thereof. Sec. 645.

(*d*) While the members of the executive and legislative body of towns, townships, and incorporated villages are called councillors, (see secs. 69-71), the members of such a body in the case of a police village are called trustees. The general powers, however, of each body are much alike. See sec. 661, *et seq.*

(*e*) See note *a* to sec. 638.

(*f*) It is presumed that two (the majority) would be a quorum. See note *n* to sec. 225; see also sec. 646.

(*g*) In the absence of express provision, persons resident without the limits of the village would not be qualified. *Reg. ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; *Reg. ex rel. Fleming* v. *Smith*, *Ib.* 66.

(*h*) See sec. 73, and notes thereto.

Deficiency in number of qualified persons.

643. If there are not six persons qualified under the preceding section, any person entitled to vote at the election may be elected. (*i*) 46 V. c. 18, s. 637.

Qualification of electors.

644. Any township elector, rated on the last assessment roll for such property in a police village as entitles him to vote in respect thereof at the municipal election for the township, shall be entitled to vote at the election for police trustees. (*j*) 46 V. c. 18, s. 638.

Place for holding first election, etc.

645. The council by which a policevillage is established shall, by the by-law establishing the same, (*k*) name the place in the village for holding the first election of police trustees, and the returning officer therefor. (*l*) 46 V. c. 18, s. 639.

Place for holding subsequent elections, etc.

646. In a police village, after the first election, the trustees thereof, or any two of them, (*m*) shall, from time to time, by writing under their hands, appoint the returning officer, and the place or places within such village for holding nominations and elections. (*n*) 46 V. c. 18, s. 640.

No election to be held in a tavern.

647. No election of police trustees shall be held in a tavern, or in a house of public entertainment licensed to sell spirituous liquors. (*o*) 46 V. c. 18, s. 641.

Nomination meeting,

648.—(1) A meeting of the electors shall take place for the nomination (*p*) of candidates for the offices of police trustees, in each police village, at noon on the last Monday in December, annually, (*q*) at such place (*r*) therein as is from time to time fixed by the trustees.

(*i*) See note *m* to sec. 76.

(*j*) See sec. 79, and notes thereto.

(*k*) See sec. 639.

(*l*) See sec. 90, and notes thereto.

(*m*) See note *n* to sec. 225.

(*n*) The county council must name the place for holding the first election, and the returning officer therefor. Sec. 645. Both must, as to subsequent elections, be appointed under this section by the trustees or any two of them.

(*o*) See sec. 96, and notes thereto.

(*p*) See note *q* to sec. 107.

(*q*) See note *s* to sec. 107.

(*r*) See note *r* to sec. 107.

(2) When the last Monday in December happens to be Christmas day, the meeting shall be held on the preceding Friday. (*s*) 46 V. c. 18, s. 642. Provision for Christmas day.

649. The returning officer (or, in his absence, a chairman to be chosen) shall preside at such meeting, (*t*) of which the police trustees shall give at least six days' notice. (*u*) 46 V. c. 18, s. 643. Who to preside.

650. If only three candidates are proposed and seconded, the returning officer or chairman shall, after a lapse of one hour, declare such candidates duly elected. (*v*) 46 V. c. 18, s. 644. If no more candidates than offices.

651. If more than the necessary number of candidates are proposed, the returning officer or chairman shall adjourn the proceedings until the first Monday in January, when a poll or polls shall be opened for the election, at nine o'clock in the morning, and shall continue open until five o'clock in the afternoon, and no longer. (*w*) 46 V. c. 18, s. 645. If more, and poll demanded. Election.

652. The returning officer or chairman of the meeting shall, on the day following that of the nomination, post up in the office of the clerk of the township, if it is situated in such police village, and if not, then in some other public place in such police village, the names of the persons nominated at such meeting; and shall, if a poll is necessary demand in writing from the clerk of the township, or clerks of the townships, a list of the names of the persons appearing by the assessment roll to be entitled to vote in the said police village, such as is required to be furnished under the next succeeding section. (*a*) 46 V. c. 18, s. 646. Notice of persons proposed, to be posted. List of voters to be obtained.

653. The clerk of the township, or clerks of the townships, in which any police village is situated, shall, at latest, on the day previous to the day for opening the poll, deliver to the Clerk of township to furnish alphabetical list of voters.

(*s*) See sec. 112.

(*t*) See note *t* to sec. 108.

(*u*) See note *c* to sec. 115.

(*v*) See note *e* to sec. 116.

(*w*) See note *f* to sec. 116.

(*a*) The omission of the returning officer or chairman to do as directed by this section would not *per se* invalidate the election. *Reg. ex rel. Walker* v. *Mitchell*, 4 P. R. 218.

returning officer of such police village a list of the names, according to the form by law prescribed in the case of other municipal elections, of the persons entitled to vote at township municipal elections, in respect of real property situate, or income received, in the said police village, or in the portion thereof in the municipality of such clerk, and shall attest the said list by his solemn declaration in writing under his hand. 46 V. c. 18, s. 647.

Except where otherwise provided, same proceedings, etc., to be had as at elections, etc., of councillors, etc.

654. The various sections of this Act relating to the proceedings at the nomination and election of township councillors, including those relating to the questions to be put and oaths to be administered to electors, and as to the appointment of a chairman or returning officer, in case the person appointed is absent, and also the provisions respecting controverted elections and for the prevention of corrupt practices, shall apply and be acted on, unless where a different provision is herein made, in the election of police trustees. (*b*) 46 V. c. 18, s. 648.

Casting vote.

655. In case a casting vote is required to determine an election, the returning officer, whether otherwise qualified or not, shall give a casting vote for one or more of such candidates, so as to decide the election, and except in such case the returning officer shall not vote at such election. (*c*) 46 V. c. 18, s. 649.

Powers of returning officer.

656. The returning officer shall have the like powers for the preservation of the peace as are given to returning officers and deputy returning officers at municipal elections. (*d*) 46 V. c. 18, s. 650.

Term of office.

657. The persons elected shall hold office until their successors are elected or appointed and sworn into office and hold their first meeting. (*e*) 46 V. c. 18, s. 651.

Returning officer to return ballot papers, etc., to clerk of

658. Every returning officer shall, on the day after the close of the poll, return the ballot papers, voters' list and other documents relating to the election, to the clerk of the

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(*b*) This is in accordance with the general rule that a particular provision, subsequent to a general provision on the same subject, shall control the latter. See note *b* to sec. 2.

(*c*) See sec. 157 and note *u* to sec. 195.

(*d*) See note *w* to sec. 100.

(*e*) See sec. 186 and notes thereto.

township in which the village is situated, or in case the village lies in several townships, then to the clerk of the county, verified under oath before such clerk, or before any justice of the peace for the county or union of counties in which the village lies, as to the due and correct taking of the votes. 46 V. c. 18, s. 652. township, verified under oath.

659. In case of a vacancy in the office of a police trustee, by death or otherwise, the remaining trustee or trustees shall, by writing to be filed with such clerk as aforesaid, appoint a trustee or trustees to supply the vacancy. (*g*) 46 V. c. 18, s. 653. Filling vacancies.

660. The trustees of every police village, or any two of such trustees, shall, by writing under their hands to be filed with the clerk of the township, or in case the village lies in several townships, with the clerk of the county, appoint one of their number to be inspecting trustee. (*h*) 46 V. c. 18, s. 654. Appointment of inspecting trustees.

DIVISION III.—DUTIES OF POLICE TRUSTEES.

Oaths of office and qualification. *Sec.* 661.
First meeting of. *Sec.* 662.
Expenses of, how provided for. *Secs.* 663-666.
Regulations to be enforced by Trustees. *Sec.* 667.
" *Prevention of fire.* (1-12).
" *Gunpowder.* (13, 14).
" *Nuisances.* (15).
Penalties. *Secs.* 668-670.
Neglect of duty by Trustees, how punishable. *Sec.* 669.
Limitation of actions for penalties. *Sec.* 670.

661. Every police trustee shall take oaths of office and qualification in the same manner and within the time prescribed for township councillors, under like penalties in case of default. (*i*) 46 V. c. 18, s. 655. Oaths of office and qualification.

(*g*) This is contrary to the ordinary rule. In the event of a vacancy in a council, the council orders a new election. See sec. 177, and notes thereto. Here the new trustee is to be appointed, not elected. See note *c* to sec. 186.

(*h*) The duties of the inspecting trustee are more especially to attend to the duties of the office, and enforce the regulations of the police village. See sec. 665; sec. 667 sub. 15; sec. 668.

(*i*) See sec. 277, and notes.

When first meeting to be held.

662. The trustees of every police village shall hold their first meeting at noon on the third Monday of the same January in which they are elected, or on some day thereafter at noon. (*j*) 46 V. c. 18, s. 656.

Expenditure, how provided for.

663. The trustees, at any time previous to the first day of June, may require the council of the township or townships in which the police village is situated to cause to be levied along with the other rates, upon the property liable to assessment in such village, such sums as they may estimate to be required to cover the expenditures for that year in respect of matters coming within their duties, and to cover any balance for expenditures incurred during the year then last past, (*k*) such sum not to exceed one cent in the dollar on the assessed value of such property. (*l*) 46 V. c. 18, s. 657.

Where village in two or more townships.

664. In case the village is situated in two or more townships, the trustees shall require a proportionate amount from each, according to the value of the property of the village in each township as shown by the last equalized assessment rolls. (*m*) 46 V. c. 18, s. 658.

Payment of orders given by trustees, etc.

665. The township treasurer shall from time to time, if the has moneys of the municipality in his hands not otherwise appropriated, pay any order given in favour of any person by the inspecting trustee, or by any two of the trustees, to the extent of the amount required to be levied as aforesaid, although the same may not have been then collected. (*n*) 46 V. c. 18, s. 659.

(*j*) See sec. 223, and notes.

(*k*) The police village, for purposes of taxation, is a portion of the township or townships in which situate. Hence, when the police trustees require moneys to enable them properly to discharge their official duties, they can only obtain it by application to the township council or councils. See sees. 664, 665. In this respect they are in the same situation as the board of police in cities. See note *v* to sec. 444.

(*l*) See note *e* to sec. 357.

(*m*) See note *k supra*.

(*n*) This is for an advance on the levy. It is the duty of the township treasurer, if he have unappropriated township moneys in hand, to make the advance. The advance is to be made, not to the police trustees, but to any person having an order signed by the inspecting trustee or any two of the trustees. The order cannot be properly given except for work actually done, or in payment of some other executed contract.

666. No trustee shall give such order in favour of any person except for work previously actually performed, or in payment of some other executed contract. (*o*) 46 V. c. 18, s. 660. When orders may be given.

667. The trustees of every police village shall execute and enforce therein the regulations following (*p*) :— Following regulations to be enforced :

Prevention of Fire.

1. Every proprietor of a house more than one story high, shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, (*q*) under a penalty of $1 for every omission ; and a further penalty of $2 for every week such omission continues. For providing ladders, etc. Penalty.

2. Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, (*r*) under a penalty of $1 for each bucket deficient. Fire buckets. Penalty.

3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, (*s*) under a penalty not exceeding $2 for non-compliance. As to furnaces, etc. Penalty.

4. No person shall pass a stovepipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the woodwork nearest thereto ; and the pipe of every stove shall be inserted into a chimney ; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood-work, (*t*) under a penalty of $2. Stove pipes, etc. Penalty.

5. No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp, unless well enclosed in a lantern, nor with a lighted pipe or cigar, nor with fire not properly secured, (*u*) under a penalty of $1. Lights in stables, etc. Penalty.

(*o*) See *Chatham* v. *Houston*, 27 U. C. Q. B. 550.

(*p*) The regulations are made by the statute. The duty to enforce them is obligatory. See sec. 669.

(*q*) See sub-s. 19 of sec. 496.

(*r*) See sub-s. 21 of sec. 496.

(*s*) See sub-s. 15 of sec. 496.

(*t*) See sub-s. 15 of sec. 496.

(*u*) See sub-s. 13 of sec. 496.

Chimneys. Penalty.

6. No person shall light or have a fire in a wooden house or outhouse, unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, (*v*) under a penalty of $1.

Securing fire carried through streets, etc. Penalty

7. No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden, or other place, without having such fire confined in some copper, iron, or tin vessel, (*w*) under a penalty of $1 for the first offence, and of $2 for every subsequent offence.

Lighting fires on streets. Penalty.

8. No person shall light a fire in a street, lane, or public place, (*x*) under a penalty of $1.

Hay, straw etc. Penalty.

9. No person shall place hay, straw, or fodder, or cause the same to be placed, in a dwelling house, (*y*) under a penalty of $1 for the first offence, and of $5 for every week the hay, straw, or fodder is suffered to remain there.

Ashes, etc. Penalty.

10. No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box, or thing not lined or doubled with sheet-iron, tin, or copper, so as to prevent danger of fire from such ashes or cinders, (*z*) under a penalty of $1.

Time. Penalty.

11. No person shall place or deposit any quick or unslacked lime in contact with any wood of a house, outhouse, or other building, under a penalty of $1, and a further penalty of $2 a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, (*a*) so as to prevent any danger of fire.

Charcoal furnaces. Penalty.

12. No person shall erect a furnace for making charcoal of wood, (*b*) under a penalty of $5.

(*v*) See sub-s. 13 of sec. 496.

(*w*) See sub-s. 17 of section 496.

(*x*) *Public Place.* See note *r* to sub-s. 39 of section 489.

(*y*) See sub-s. 14 of sec. 496.

(*z*) See sub-s. 17 of sec. 496.

(*a*) The continuance of the offence is here, as it were, made a new though not strictly a subsequent offence. The person offending is subject to a penalty of $2 a day after the first until the removal of the lime. See *Pilcher* v. *Stafford*, 4 B. & S. 775.

(*b*) See sub-s. 15 of sec. 496.

Gunpowder.

13. No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, (*c*) under a penalty of $5 for the first offence, and $10 for every subsequent offence. (*d*) Gunpowder how to be kept. Penalty.

14. No person shall sell gunpowder, or permit gunpowder to be sold in his house, storehouse or shop, outhouse or other building, at night, (*e*) under a penalty of $10 for the first offence, and of $20 for every subsequent offence. Not to be sold at night. Penalty.

Nuisances.

15. No person shall throw, or cause to be thrown, any filth or rubbish into a street, lane, or public place, (*f*) under a penalty of $1, and a further penalty of $2 for every week he neglects or refuses to remove the same after being notified to do so by the inspecting trustee, (*g*) or some other person authorized by him. 46 V. c. 18, s. 662. Certain nuisances prohibited.

Penalties.

668. The inspecting trustee, or in his absence, or when he is the party complained of, one of the other trustees, shall sue for all penalties incurred under the regulations of police herein established, (*h*) before a Justice of the Peace having jurisdiction in the village and residing therein, or within five miles thereof; or if there be no such Justice, then before any Justice of the Peace having jurisdiction in the village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, (*i*) and cause the penalty, with or without costs, as he may see fitting, to be levied by distress and sale of the goods of the offender, to be paid over to the path-master or path-masters of the division Who to sue for penalties. And before whom. Conviction and levy of penalty.

(*c*) See sub-s. 9 of sec. 496.

(*d*) There is a difference between a continuing offence and a subsequent offence. See note *a* to sub-s. 11 of this section.

(*e*) See sub-s. 9 of sec. 496.

(*f*) See note *p* to sub-s. 27 of sec. 496.

(*g*) See note *a* to sub-s. 11 of this section.

(*h*) See section 667.

(*i*) *Credible witness.* See note *h* to sec. 421.

or divisions to which the village belongs, or to such of the said path-masters as the trustees may direct; and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the village, under the direction of the trustees. (*j*) 46 V. c. 18, s. 663.

Penalty for breach of duty by trustees.

669. Any police trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the village offering to adduce proof of an offence against the regulations of police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on him by this Act, (*k*) shall incur a penalty of $5. 46 V. c. 18, s. 664.

When prosecutions to be commenced.

670. The penalties prescribed by the next preceding section, or by that for the establishment of regulations of police, shall be sued for within ten days (*l*) after the offence has been committed or has ceased, and not subsequently. 46 V. c. 18, s. 665.

CONFIRMING AND SAVING CLAUSES.

Exceptions from repeal

671. Nothing herein contained shall be taken or construed to affect or repeal so much of the schedules in either of the Municipal Corporation Acts of 1849 and 1850 as defines the limits or boundaries of any cities or towns, being schedule B. of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten and eleven, and schedule C of the same Act, numbers one, two and three, and schedule B of the Act of 1850, numbers one, five, twelve, thirteen, fourteen, and fifteen; and also so much of schedule D of the said Acts of 1849 and 1850 as relates to Amherstburgh, and also so much of section 203, of the said Act of 1849, and so much of any other sections of either of the said Acts relating to any of the schedules thereof as have been acted upon, or as are in force and remain to be acted upon at the time this Act takes effect, and all proclamations and special statutes by or under which

Boundaries of cities and towns.

Amherstburgh.

Proclamations.

(*j*) See note *x* to sec. 427, as to the form of conviction.

(*k*) The duty to enforce the regulations of a police village is obligatory, see sec. 667, and is here made penal. As to what is a *wilful* neglect or omission, see sec. 227 of the Assessment Act, and notes thereto.

(*l*) See note *b* to sec. 185.

cities and other municipalities have been erected, so far as respects the continuing the same and the boundaries thereof, shall continue in force. (*m*) 46 V. c. 18, s. 666.

Special Acts. Rev. Stat. c. 185 not affected.

672. Nothing herein contained shall affect *The Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River.* 46 V. c. 18, s. 667.

(*m*) This section was specially preserved and continued by sec. 423 of the Act 29 & 30 Vict. c. 51. Its existence is essential to the preservation of the territorial and municipal organization of many municipalities.

SCHEDULE A.

(*Section* 123.)

FORM OF BALLOT PAPER.

(1. *In the case of Cities.*)

FORM FOR MAYOR.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No. , day of January, 18 .

FOR MAYOR.

ALLAN.

Charles Allan, King Street, City of Toronto, Merchant.

BROWN.

William Brown, City of Toronto, Banker.

FORM FOR ALDERMAN.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No , day of January, 18

FOR ALDERMAN.

ARGO.

James Argo, City of Toronto, Gentleman.

BAKER.

Samuel Baker, City of Toronto, Baker.

DUNCAN.

Robert Duncan, City of Toronto, Printer.

(2. *In the Case of Towns divided into Wards.*)

FORM FOR MAYOR, REEVE, AND DEPUTY REEVE.

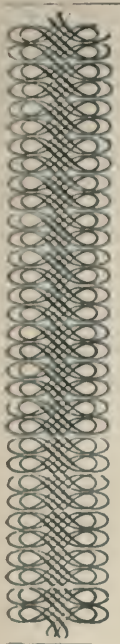
Election for the Members of the Municipal Council of the Town of , Ward

No. , Polling Subdivision No.

day of January, 18

FOR MAYOR.	THOMPSON. Jacob Thompson, of the Town of of Barrie, Merchant.	X
	WALKER. Robert Walker, of the Town of Barrie, Physician.	
FOR REEVE (if any.)	BROWN. John Brown, of the Town of Barrie, Merchant.	
	ROBINSON. George Robinson, of the Town of Barrie, Merchant.	X
FOR DEPUTY REEVE (if any).	ARMOUR. Jacob Armour, of the Town of Barrie, Pumpmaker.	
	BOYD. Zachary Boyd, of the Town of Barrie, Tinsmith.	X

FORM FOR COUNCILLORS.



Election for the Members of the Municipal Council of the Town of , Ward No. Polling Subdivision No. day of January, 18 .

FOR COUNCILLOR.

BULL. X

John Bull, of the Town of Barrie, Butcher.

JONES.

Morgan Jones, of the Town of Barrie, Grocer.

McALLISTER.

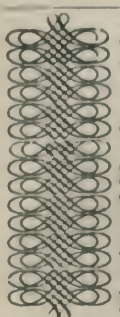
Allister McAllister, of the Town of Barrie, Tailor.

O'CONNELL. X

Patrick O'Connell, of the Town of Barrie, Milkman.

(3. *In the case of Townships divided into Wards.*)

FORM FOR REEVE.



Election of Members of the Municipal Council of the Township of , in the County of , Ward No. day of January, 18 .

FOR REEVE.

BARDELL

Thomas Bardell, of the Township of Peel, Yeoman.

SNODGRASS.

Alfred Snodgrass, of the Township of Peel, Yeoman.

FORM FOR COUNCILLORS.

Election of Members of the Municipal Council of the Township of , in the County of
Ward No. day of January, 18

FOR COUNCILLOR.

BULL.

John Bull, of the Township of York, Doctor of Medicine.

JONES.

Morgan Jones, of the Township of York, Farmer.

McALLISTER.

Allister McAllister, of the Township of York, Farmer.

O'CONNELL.

Patrick O'Connell, of the Township of York, Lumber Merchant.

RUAN.

Malachi Ruan, of the Township of York, Farmer.

SCHULTZE.

Gottfried Schultze, of the Township of York, Farmer.

WASHINGTON.

George Washington, of the Township of York, Gentleman.

(4. *In the case of Incorporated Villages and Townships not divided into Wards*).

Election of Members of the Municipal Council of the Village (*or* Township) of , in the County of
. Polling Subdivision No. .
day of January, 18 .

FOR REEVE.	BROWN. John Brown, of the Village of Weston, Merchant.
	ROBINSON. George Robinson, of the Village of Weston, Physician.
FOR DEPUTY REEVE (if any.)	ARMOUR. Jacob Armour, of the Village of Weston, Pumpmaker.
	BOYD. Zachary Boyd, of the Village of Weston, Tinsmith.
FOR COUNCILLOR.	BULL. John Bull, of the Village of Weston, Butcher.
	JONES. Morgan Jones, of the Village of Weston, Grocer.
	McALLISTER. Allister McAllister, of the Village of Weston, Tailor.
	O'CONNELL. Patrick O'Connell, of the Village of Weston, Milkman.

NOTE.—In any case where there are two or more Deputy Reeves, the ballot paper will make provision accordingly, naming them as first Deputy Reeve, second Deputy Reeve, &c.

46 V. c. 18, *Sched.* A.

SCHEDULE B.

(*Sections* 126 *and* 146.)

DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross, thus × , on the right hand side, opposite the name or names of the candidate or candidates for whom he votes, or at any other place within the division which contains the name or names of such candidate or candidates.

The voter will then fold up the ballot paper so as to show the name or initials of the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy Returning Officer (*or* Returning officer *as the case may be*), and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter votes for more candidates for any office than he is entitled to vote for, his ballot paper will be void so far as relates to that office, and will not be counted for any of the candidates for that office.

If the voter places any mark on the paper by which he may afterwards be identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the officer, he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following forms of Ballot Paper, given for illustration, the Candidates are, for Mayor, JACOB THOMPSON *and* ROBERT WALKER : *for Reeve,* JOHN BROWN *and* GEORGE ROBINSON ; *for Deputy Reeve,* JACOB ARMOUR *and* ZACHARY BOYD ; *and for Councillors,* JOHN BULL, MORGAN JONES, ALLISTER MCALLISTER *and* PATRICK O'CONNELL ; *and the elector has marked the first paper in favour of* JACOB THOMPSON *for Mayor,* GEORGE ROBINSON *for Reeve, and* ZACHARY BOYD *for Deputy Reeve, and has marked the second paper in favour of* JOHN BULL *and* PATRICK O'CONNELL *for Councillors :—*

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. day of January, 18 .

FOR MAYOR.	THOMPSON. Jacob Thompson, of the Town of Barrie, Merchant.	X
	WALKER. Robert Walker, of the Town of Barrie, Physician.	
FOR REEVE. (if any.)	BROWN. John Brown, of the Town of Barrie, Merchant.	
	ROBINSON. George Robinson, of the Town of Barrie, Merchant.	X
FOR DEPUTY REEVE (if any).	ARMOUR. Jacob Armour, of the T own of Barrie, Pumpmaker.	
	BOYD. Zachary Boyd, of the Town of Barrie, Tinsmith.	X

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. day of January, 18 .

FOR COUNCILLOR.	BULL. John Bull, of the Town of Barrie, Butcher.	X
	JONES. Morgan Jones, of the Town of Barrie, Grocer.	
	McALLISTER. Allister McAllister, of the Town of Barrie, Tailor.	
	O'CONNELL. Patrick O'Connell, of the Town of Barrie, Milkman.	X

46 V. c. 18, *Sched.* B.

SCHEDULE C.

(*Sections* 129, 130, 131, 132, *and* 303).

FORM IN WHICH THE VOTERS' LIST TO BE FURNISHED TO DEPUTY RETURNING OFFICERS IS TO BE PREPARED.

Column for mark indicating that the voter has voted.	NAMES OF THE VOTERS.	Description of Property in respect of which the Voter is entitled to vote.	Freeholder, Householder, Tenant, Farmer's Son, or Income Voter.	Residence of Voter	Objections.	Sworn or affirmed.	Refusal to Swear or affirm.	Mayor and Reeve.	Councillors.	REMARKS.

NOTE.—In Cities, the column above headed "Mayor and Reeve" will be headed "Mayor;" and the column above headed "Councillors" will be headed "Aldermen."

In Townships and Villages, the column above headed "Mayor and Reeve" will be headed "Reeve."

46 V. c. 18, *Sched.* C.

SCHEDULE D.

(*Section* 135.)

CERTIFICATE AS TO ASSESSMENT ROLL.

Election to the Municipal Council of the
of 18

I, *A. B.*, Clerk of the Municipality of , in the County of , do hereby certify that the assessment roll for this Township, (*or as the case may be*) of upon which the voters' list to be used at this election is based, was returned to me by the Assessor for said Township (*or as the case may be*) on the day of , 18 , and that the same was finally revised and corrected on the day of , 18 .

Dated this day of , 18 .

A. B.,
Clerk.

46 V. c. 18, *Sched.* D.

SCHEDULE E.

(*Section* 149.)

FORM OF DECLARATION OF INABILITY TO READ, &C.

I, *A. B.*, of , being numbered on the voters' list, for polling subdivision No. , in the City (*or as the case may be*) of , and County of , being a legally qualified elector for the said City (*or as the case may be*) of , do hereby declare that I am unable to read (*or* that I am from physical incapacity unable to mark a voting paper, *as the case may be*),

A. B. (His × mark.)

The day of , A. D. 18 .

46 V. c. 18, *Sched.* E.

SCHEDULE F.

(*Section* 149.)

FORM OF ATTESTATION CLAUSE TO BE WRITTEN UPON OR ANNEXED TO THE DECLARATION OF INABILITY TO READ, ETC.

I, *C. D.*, the undersigned, being the Deputy Returning Officer for polling subdivision No. , for the City (*or as the case may be*) of , do hereby certify that the above (*or as the case may be*) declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

(*Signed*) *C. D.*,
Deputy Returning Officer for Polling Sub-Division No. , in the City (*or as the case may be*) of .

Dated this day of , A. D. 18 .

46 V. c. 18, *Sched.* F.

SCHEDULE G.

(*Sections* 155, 315 *and* 316.)

OATH OF DEPUTY RETURNING OFFICER AFTER THE CLOSING OF THE POLL.

I, *C. D.*, the undersigned Deputy Returning Officer for polling subdivision No. , of the City (*or as the case may be*) of , in the County of , do solemnly swear (*or if he is a person permitted by law to affirm*, do solemnly affirm) that to the best of my knowledge the annexed voters' list used in and for the said polling subdivision No. of the said City (*or as the case may be*), was so used in the manner prescribed by law and that the entries required by law to be made therein were correctly made.

(*Signed*) *C. D.*
Deputy Returning Officer.

Sworn (*or* affirmed) before me at , this day of A. D. 18 .

(*Signed*) *X. Y.*,
Justice of the Peace.
Or A. B.,
Clerk of the Municipality of .

NOTE.—*The foregoing oath is to be annexed to the voters' list used at the election.*

46 V. c. 18, *Sched.* G.

SCHEDULE H.

(*Section* 170.)

FORM OF STATUTORY DECLARATION OF SECRECY.

I, *A. B.*, solemnly promise and declare that I will not at this election of members of the Municipal Council of the City (*or as the case may be*) of , disclose to any person or persons the name of any person who has voted, and that I will not in any way whatsoever unlawfully attempt to ascertain the candidate or candidates for whom any elector shall vote or has voted, and will not in any way whatsoever aid in the unlawful discovery of the same; and I will keep secret all knowledge which may come to me of the person for whom any elector has voted.

Made and declared before me at , this day of , A. D. 18 .

C. D.,
Justice of the Peace (*or* Clerk of the Municipality of).

46 V. c. 18, *Sched.* H.

SCHEDULE J.

(*Section* 295.)

FORM OF BALLOT PAPER.

.....18 . Voting on By-Law to (*here insert object of the by-law*), submitted to the Council of the of	FOR The By-law. AGAINST The By-law.

46 V. c. 18, *Sched.* J.

SCHEDULE K.

(*Sections* 298 *and* 300.)

I, the undersigned *A. B.*, solemnly declare that I am a ratepayer of the township (*or as the case may be*) of (*the municipality the council of which proposed the by-law*), and that I am desirous of promoting (*or* opposing, *as the case may be*) the passing of the by-law to (*here insert object of the by-law*), submitted to the council of said township (*or as the case may be*).

(*Signature*) *A. B.*

Made and declared before me this
day of , A. D. 18

C. D.,
Head of Municipality.

46 V. c. 18, *Sched.* K.

SCHEDULE L.

(*Section* 307.)

DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross (thus ×) on the right hand side, in the upper space if he votes for the passing of the by-law, and in the lower space if he votes against the passing of the by-law.

The voter will then fold up the ballot paper so as to show the name or initials of the deputy returning officer (*or* returning officer, *as the case may be*) signed on the back, and leaving the compartment will, without shewing the front of the paper to any person, deliver such ballot so folded to the deputy returning officer (*or* returning officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the deputy returning officer (*or* returning officer, *as the case may be*), who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter places on the paper more than one mark, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the deputy returning officer (*or* returning officer, *as the case may be*), he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following form of ballot paper, given for illustration, the elector has marked his ballot paper in favour of the passing of the by-law :—

Voting on by-law to (*here insert object of the by-law*) submitted to the council of the ..... of 18	
	FOR The By-law. X
	AGAINST The By-law.

46 V. c. 18, *Sched.* L.

SCHEDULE M.

(*Section* 322.)

FORM OF STATUTORY DECLARATION OF SECRECY.

I, *A. B.*, solemnly promise and declare that, at the voting on the by-law submitted to the electors by the council of the township (*or as the case may be*) of (and the voting on which has been appointed for this day), I will not attempt in any way whatsoever unlawfully to ascertain the manner in which any elector shall vote or has voted, and will not in any way whatsoever aid in the

unlawful discovery of the same; and I will keep secret all knowledge which may come to me, of the manner in which any elector has voted.

Made and declared before me at , this day of , A.D. 18 .

C. D.,

Justice of the Peace (*or* Clerk of the Municipality of).

46 V. c. 18, *Sched.* M.

An Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River.

R.S. O. CAP. 185.

ORGANIZATION OF TOWNSHIPS:
- Area and population required, s. 1.
- Preliminary meeting, ss. 2-5.
- Election of first Council, ss. 6-16.
- Appointment of Clerk, etc., s. 17.

POWERS OF COUNCIL:
- General powers, ss. 18, 19.
- As to assessment, ss. 20, 21.
- Assessment appeals, ss. 22-28.
- Assessments after the first, s. 29.
- Collection of taxes, ss. 30-32.
- Arrears of taxes, s. 33.
- Sale of lands, s. 34.
- Liquor licenses, s. 35.
- Licensing auctioneers, etc., s. 36.
- Constables, s. 37.
- Lock-up houses, s. 38.
- Other powers, s. 39.

ELECTIONS AND COUNCILS AFTER THE FIRST:
- Voters' qualification, s. 40.
- Councillors' qualification, s. 41.
- Election how conducted, s. 42.
- Nomination meeting, ss. 43-45.
- Polling, s. 46.
- Tenure of office, s. 47.
- Controverted elections, s. 48.
- Vacancies in Council, s. 49.
- Conduct of business, s. 50.
- Reeve to be a Justice of the Peace, s. 51.

POLICE VILLAGES:
- Formation of, ss. 52, 53.
- Electors, s. 54.
- Trustees, s. 55.

POWERS OF LIEUTENANT-GOVERNOR AS TO ANNEXATION OR UNION, s. 56.

SPECIAL PROVISIONS AS TO ALGOMA AND THUNDER BAY, s. 57.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Municipalities may be organized.

1.—(1) The inhabitants of any township in any of the districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay and Rainy River, having a population of not less than 100 persons, may organize themselves into a township municipality, and the inhabitants of any locality in any of the said districts not exceeding in area 20,000 acres not surveyed into a township or townships, and having a population of not less than 100 persons, may likewise organize themselves into a township municipality. 47 V. c. 33, s. 1; 48 V. c. 20, s. 7, Preamble and Sched.

Union township municipalities may be organized.

(2) Provided always that any number of townships in the district of Rainy River, having in the aggregate at least 100 inhabitants, may organize themselves into a union township municipality, although the population of any one of the said townships may not amount to one hundred persons, and the proceedings for the purposes of such organization, and all other purposes mentioned in this Act, shall, as nearly as may be practicable, be the same as are hereinafter provided for in respect of the organization of an individual township municipality, and all rights, privileges, and powers conferred upon or granted to individual municipalities organized thereunder shall extend and be applicable to such union township municipality, provided that any township forming part of such union municipality having at any time after the formation thereof a population of not less than one hundred persons may withdraw from such union, and the inhabitants thereof may organize themselves into an individual township municipality in the same manner and for all purposes under this Act, as if such township had not formed part of a union township municipality, and on such withdrawal the assets and liabilities of such township shall be determined, borne and paid in like manner as is directed by the provisions of *The Municipal Act* in regard to the withdrawal or separation of municipalities. 50 V. c. 30, s. 1.

Rev. Stat. c. 184.

Judge or Stipendiary Magistrate, upon petition, to call a public meeting to form Municipality.

2. In order to constitute and establish a municipality as above provided, it shall be lawful for the District Judge in Algoma and in that part of Thunder Bay not included within Rainy River, and in Rainy River or any other of the said districts, for the Stipendiary Magistrate of the district in which such locality is situate, upon the receipt of a petition in which the limits of the proposed municipality are defined, and signed by not less than thirty inhabitants of such locality, to call a meeting by public notice of said

inhabitants, to consider the expediency of erecting a municipality. R. S. O. 1877, c. 175, s. 2; 50 V. c. 8, Sched.

Petitioners to make a deposit to meet expenses of the meeting and election.

3. Before the Judge or Stipendiary Magistrate calls said meeting, it shall be the duty of those petitioning for the municipality, to deposit with him a sum sufficient to meet the expense of the meeting, as also of the election to be held, as hereinafter provided. R. S. O. 1877, c. 175, s. 3.

Judge or Magistrate to appoint chairman.

4. The Judge or Stipendiary Magistrate shall name some fit and competent person to preside at the meeting, who shall forthwith report the result of the same, with the votes given thereat, to the Judge or Stipendiary Magistrate, under oath, which may be administered by any Justice of the Peace. R. S. O. 1877, c. 175, s. 4.

Judge or Magistrate to provide for first election.

5. Upon receiving the report of the meeting for the establishment of a municipality, the Judge or Stipendiary Magistrate shall fix a time and place for holding the first election in the proposed municipality, and shall, in the notice providing for the election, name the returning officer who shall preside thereat; but no such municipality shall be established unless at such meeting at least thirty freeholders or householders have voted in favour thereof. R. S. O. 1877, c. 175, s. 5.

Council of what officers composed.

6. The officers to be elected at the said election shall be one reeve and four councillors, who shall have the same qualification as voters, and shall constitute the council of the township, the reeve being the head thereof. R. S. O. 1877, c. 175, s. 6.

Qualification of voters.

7. The persons qualified to vote at the election shall be male British subjects of the full age of twenty-one years, being householders resident in the locality proposed to be organized into a municipality. R. S. O. 1877, c. 175, s. 7.

Nomination.

8. At the time and place appointed by the Judge or Stipendary Magistrate under section 5 of this Act, the nomination of candidates shall be made in the manner provided in respect to the nomination of candidates at municipal elections. R. S. O. 1877, c. 175, s. 8.

Election by acclamation.

9. In case no more persons are nominated than are required to be elected, the returning officer shall declare such persons to be elected. R. S. O. 1877, c. 175, s. 9.

Notice of time and place of holding poll.

10. In case a poll is required the returning officer shall adjourn the proceedings until the same day of the following week, and shall declare the place at which a poll will be opened in the locality, and shall forthwith post up in at least six of the most public and conspicuous places in the locality, a notice declaring that a poll will be held at such time and place. R. S. O. 1877, c. 175, s. 10.

Poll book and how filled up.

11. The returning officer shall, previous to the opening of the poll, procure a poll book, and he shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and shall, opposite to to such columns, write the names of the electors offering to vote at the election and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name. R. S. O. 1877, c. 175, s. 11.

Casting vote.

12. In case a casting vote is required to determine an election, the returning officer, whether otherwise qualified or not, shall give a casting vote for one or more of the candidates, so as to decide the election, and except in such case, the returning officer shall not vote at any such election. R. S. O. 1877, c. 175, s. 12.

Term of office of first members of council.

13. The persons elected shall hold office until their successors are elected, or appointed and sworn into office, and hold their first meeting. R. S. O. 1877, c. 175, s. 13.

Oath of voters.

14. The following shall be the oath to be administered to voters at such election :

You swear (*or* solemnly affirm) that you are *A. B.* ;

That you are a subject of Her Majesty by birth (*or* naturalization) ;

That you are of the full age of twenty-one years ;

That you are a householder in the locality now proposed to be organized into a municipality ;

That you have not received anything nor has anything been promised you, directly or indirectly, either to induce you to vote at this election or for loss of time, travelling expenses, hire of team, or any other service connected with this election ;

That you have not, directly or indirectly, paid or promised anything to any person either to induce him to vote or refrain from voting at this election ;

So help you God.

R. S. O. 1877, c. 175, s. 14.

Declaration of election.

15. After the election, the returning officer shall return to the Judge or Stipendiary Magistrate the result of the same, and the Judge or Stipendiary Magistrate shall, as soon as may be convenient thereafter, by public notice, declare the names of the persons so elected, who shall forthwith enter upon the duties of their office; and the municipality shall from thenceforth be known as "The Corporation of the Municipality of , in the District of ;" and the said reeve and councillors shall hold and continue in office until their successors are elected, as hereinafter provided. R. S. O. 1877, c. 175, s. 15.

Name of municipality.

Tenure of office of councillors.

First meeting of council.

16. The first meeting of the council shall be held at a time and place to be fixed by the Judge or Stipendiary Magistrate. R. S. O. 1877, c. 175, s. 16.

Appointment and remuneration of clerk, treasurer, and collector.

17. The council shall, at their first meeting or as early as possible thereafter, appoint a clerk, treasurer, and collector, who shall hold office until removed or dismissed by the council; and the council shall also fix the remuneration to be paid said officers, by by-law to be passed for that purpose. The clerk shall, within six days after his appointment, transmit to the Provincial Treasurer notice of the formation of the municipality with a description of its boundaries or limits. R. S. O. 1877, c. 175, s. 17; 50 V. c. 29, s. 55.

POWERS OF COUNCILS.

Power of councils to pass by-laws.

18. The council of every municipality in any of the said districts, whether incorporated under this Act or otherwise, shall have power to pass by-laws for such purposes as are from time to time authorized to be passed by the councils of townships; and the provisions relating to townships and their officers of any Municipal Act from time to time in force, shall apply to such municipalities, except where inconsistent with the special provisions of the Act under which the municipality was incorporated or this Act. 48 V. c. 41, s. 1.

Power to pass by-laws as to matters named in Rev. Stat. c. 184 s. 489 (47-49) and s. 496 (5, 11-25, 27, 28 and 34).

19. The council of every such municipality shall also have power to pass by-laws in respect of the several matters named in sub-sections 47 to 49 of section 489, and in sub-sections 5, 11 to 25, 27, 28, and 34 of section 496 of *The Municipal Act*. Any such by-law may, at the option of the council, be operative throughout the municipality or only within certain defined parts thereof. 48 V. c. 41, s. 2.

Assessors to be appointed to enter in assessment rolls,

20. The council shall, as early as convenient after their first meeting, appoint one or more assessors, who shall enter upon a roll to be provided for that purpose :

Freeholders and householders,

1. The names of all the freeholders and householders in the municipality, stating at the same time on the roll the amount of all the real and personal property owned by such persons respectively, and the actual value thereof, and whether the owners are resident or not ;

Persons taxable for income,

2. The names of all persons liable to taxation for income, or who, though exempt from taxation, have required their names to be entered on the said roll in respect of such income, stating at the same time the amount of such income ;

Farmers' sons, Rev. Stat. c. 193.

3. The names of all farmers' sons entitled to be assessed under the provisions of *The Assessment Act* ;

Notice of assessment.

and the said assessor or assessors shall duly notify the person or persons so assessed by leaving a notice at his or her place of abode, or if a non-resident, by leaving the same at the nearest post-office, stating in such notice the particulars of said assessment. R. S. O. 1877, c. 175, s. 19.

Rolls to be returned to clerk.

21. The said roll shall be returned to the clerk of the municipality within such time as may be provided for by any by-law passed by the council. R. S. O. 1877, c. 175, s. 20.

Appeal against assessment.

22. The person or persons so assessed, if he complains of his assessment, shall, within one month after the time fixed for returning the roll, give to the clerk written notice of his grounds of complaint. R. S. O. 1877, c. 175, s. 21.

Council to hear and determine appeals.

23. The council shall, within two months after the time fixed for returning the roll, appoint a time and place for hearing said complaints, as a Court of Revision, and shall, after hearing the parties complaining, as well as the assessor or assessors, and such evidence as may be adduced, alter or amend the roll accordingly. R. S. O. 1877, c. 175, s. 22.

Appeal from the Council to Stipendiary Magistrates.

24—(1) An appeal may be had from the decision of the council in that behalf upon any complaint in respect of the said assessment or any subsequent assessment in the same manner as to the County Judge in other municipalities, and the decision of the Stipendiary Magistrate shall be final, and this appeal shall extend to any assessment for the municipality as well as to the first assessment. R. S. O. 1877, c. 175, s. 23 ; 46 V. c. 23, s. 1.

Appeals under Assessment Act. Rev. Stat. c. 193

(2) Subject to the provisions of section 76 of *The Assessment Act*, such appeals in respect of an assessment in any municipality in the district of Algoma, or in that part of the district of Thunder Bay, not included in the Rainy River district, shall be to the District Judge, and in any municipality in any of the districts of Muskoka, Parry Sound, Nipissing and Rainy River, shall be to the Stipendiary Magistrate of the district, and such appeal shall lie whether the municipality was organized under any general Act relating to municipal institutions in the said districts, or was incorporated otherwise. 49 V. c. 19, s. 5.

Time for appealing where decision of Court of Revision delayed.

25—(1) If for any reason the decision of the Court of Revision is not given six weeks before the time limited for the return of the roll by the Judge or Stipendiary Magistrate in case of an appeal to him, then the time for the return of such roll by the Judge or Stipendiary Magistrate shall be six weeks from the day when the decision of the Court of Revision is given.

(2) The Judge or Stipendiary Magistrate may, note upon the roll that any assessment in respect of which an appeal is pending before him is undecided, and may return such roll to be acted upon in respect of the assessments which are concluded ; and the said Judge or Magistrate shall thereafter certify to the clerk of the municipality his decision as to such appeal ; and such certificate, whether given before or after the expiration of the said six weeks, shall have the like effect as if his decisions were entered upon the roll by the said Judge or Magistrate. 46 V. c. 23, s. 2.

Notice of appeal.

26. Notice of appeal shall, in all cases of appeal, be left with the clerk of the Division Court of the division in which such municipality is situated, and copies thereof shall also be left with the clerk of the municipality ; and such notice shall be so given and left within the time, and the said clerks respectively shall, with regard to such appeal, perform all the duties and matters in the manner in that behalf required by law in the case of a like appeal to the County Judge as aforesaid. R. S. O. 1877, c. 175, s. 24.

Powers of Stipendiary Magistrate.

27. The Judge or Stipendiary Magistrate shall have the like powers and shall perform the like duties in respect of such appeals as are performed by the County Judge in like case in other municipalities. R. S. O. 1877, c. 175, s. 25.

Revised roll to be the roll of the municipality.

28. The said roll when finally revised by the council, or by the Judge or Stipendiary Magistrate in case of appeal, shall be taken and held as the roll of the municipality, for all purposes, until a new roll has been made as hereinafter provided. R. S. O. 1877, c. 175, s. 26.

Council to fix time for making assessment.

29. The council shall, by by-law, fix the time for making the subsequent assessments in the municipality at periods of not less than one nor more than three years: and the year for the purposes of this Act shall be considered as commencing on the 1st day of January thereof. R. S. O. 1876, c. 175, s. 27.

Council to levy rates.

30. The council may, in each year after the final revision of the roll, pass a by-law for levying a rate on all the real and personal property on said roll, of not more than two cents on the dollar, to provide for all the necessary expenses of the municipality, and also such sum or sums as may be found expedient for the purposes mentioned in section 19 of this Act. R. S. O. 1877, c. 175, s. 28.

Expenditure of taxes in township unions in Rainy River.

31—(1) All municipal taxes except for debenture debt levied in any township in a union formed in the District of Rainy River shall, except ten per centum thereof, and the costs of collection, be expended within the township in which the same are levied, on roads, bridges, and other works of the same kind, necessary for opening up and settling the said township.

Ten per cent to be for general purposes.

(2) The council of the said union shall be at liberty to retain and appropriate for the general and other expenses of the municipality the reservation of ten per centum and the expense of collection. 50 V. c. 30, s. 2.

The Collector, his returns and powers. Rev. Stat. c. 193.

32. The council, shall, by by-law, fix the time for the collector making his return, and the collector shall have the same powers as are conferred on collectors by *The Assessment Act*. R. S. O. 1877, c. 175, s. 29.

Collection of arrears of taxes and sales of land for taxes in certain districts, etc., provided for.

33. Arrears of taxes due to any municipality in any of the said districts, shall be collected and managed in the same way as like arrears due to municipalities in counties; and the treasurer and reeve of such municipality shall perform the like duties in the collection and management of arreas of taxes as in counties are performed by the treasurers and wardens thereof; and the various provisions of law relating

to sales of land for arreas of taxes or to deeds given therefor, shall, unless otherwise provided by this Act, apply to the said municipalities and to sales of land therein for arrears of taxes due thereon and to deeds given therefor. 43 V. c. 28, s. 1.

Mode and time of sale for arrears of taxes.

34. No sale of any lands for taxes shall take place in any such municipality formed as aforesaid, except during the months of July, August, September or October; and the advertisement of the proposed sale, which under sections 164 and 165 of *The Assessment Act* is required to be published in the *Ontario Gazette* and in a local newspaper, shall, when lands are to be sold in any such municipality for arrears of taxes, be published also once a week, for at least four weeks, in such newspaper published in the city of Toronto as the Lieutenant-Governor in council may designate. R. S. O. 1877, c. 175, s. 31.

Notices, time for.

Rev. Stat. c. 193, ss. 164, 165.

Council to regulate tavern licenses.

35. The council of any municipality formed under this Act shall have the like authority in respect to taverns and shops within the municipality and the licenses therefor as the councils of townships possess under *The Liquor License Act*. R. S. O. 1877, c. 175, s. 32.

Rev. Stat. c. 194.

Townships and villages in districts to have power to license auctioneers, etc.

36. Except in the cases of townships and villages attached or belonging to a county for municipal purposes, the councils of townships and incorporated villages in provisional judicial, temporary judicial, and territorial districts shall have power to pass by-laws for the purposes mentioned in sub-sections 2 and 3 of section 495 of *The Municipal Act*. R. S. O. 1877, c. 175, s. 33.

Rev. Stat. c. 184, s. 495 (2, 3.)

Appointment and removal of constables.

37. The council shall have the power to appoint one or more constables within the municipality, whose duty it shall be to enforce and maintain law and order, and who shall perform all duties appertaining to constables; and the said council shall have power, from time to time, to remove the same, for any misconduct in their office, and shall also regulate the fees to be paid said constables: but such appointment and tariff of fees shall be subject to the approval and ratification of the Stipendiary Magistrate of the said district. R. S. O. 1877, c. 175, s. 34.

Fees to constables.

Council may establish a lock-up house.

38. The said council may establish and maintain a lock-up house within the municipality, and may establish and provide for the salary or fees to be paid the constable to be

placed in charge of such lock-up house : but the appointment of said constable shall be ratified by the Stipendiary Magistrate of the district ; and the said council shall have power to remove or suspend such constable for neglect of duty or other misconduct. R. S. O. 1877, c. 175, s. 35. Appointment of a constable thereto.

39. In addition to the powers conferred upon said township or village municipalities by this Act, the following sections of *The Municipal Act*, shall be applicable to the said municipalities, so far as they can be adapted to the same, viz : sections 245, 247, 248, 249, 250, 258, 263, 265, 266, 270, 271, 272, 273, 274, 275, 277, 289, 291, 329, 330, 331, 332, 333, 334, 338, 339, 348, 414, 419, 421, 422, 423, 479, 527 and 531. R. S. O. 1877, c. 175, s. 36. Certain sections of Rev. Stat. c. 184, to apply.

ELECTIONS AFTER THE FIRST.

40. The persons qualified to vote at every election after the first shall be : Who qualified to vote.

1. Every male freeholder and resident householder whose name appears in the revised assessment roll upon which the voters' list used at the election is based, for said municipality, and who is of the full age of 21 years, and a naturalized or natural-born subject of Her Majesty ; Real property.

2. Every male person who resides at the time of the election in the municipality in which he tenders his vote, and has resided therein continuously since the completion of the last revised assessment roll of the municipality, and derives an income from some trade, calling, office or profession of not less than $400 annually, and is assessed for such income in and by the revised assessment roll of the municipality, upon which the voters' list used at the election is based, and possesses the qualifications required by law other than in respect of property ; Income.

3. Every person who is a farmer's son within the meaning of *The Municipal Act*, and entitled as such to vote at municipal elections, under the provisions of said Act. R. S. O. 1877, c. 175, s. 37. Farmers' sons. Rev. Stat. c. 184, s. 79.

41.—(1) The persons qualified to be elected as members of the council in any municipality after said first election, shall, in addition to the qualification required for voters, be assessed in the said assessment roll for at least $200 freehold or $400 leasehold. R. S. O. 1877, c. 175, s. 38. Qualifications of Councillor.

Disqualification.

(2) Section 77 of *The Municipal Act* shall apply to members of a municipal council to be elected under this Act. (*a*) 42 V. c. 31, s. 3.

Place and conduct of election.

42. All elections after the first shall be conducted in the same manner as is provided for municipal elections in townships in Ontario, except so far only as otherwise enacted by this Act. R. S. O. 1877, c. 175, s. 39.

Nomination of Reeve and Councillors.

43. A meeting of the electors shall take place for the nomination of candidates for the offices of reeve and councillors of the municipalities formed in accordance with the provisions of this Act, on the last Monday in December, annually, at such place therein as may from time to time be fixed by by-law of the council. R. S. O. 1877, c. 175, s. 40.

Nomination day falling on Christmas Day.

44. When the last Monday in December happens to be Christmas Day, the nomination of candidates for the office of reeve and councillors in each of the said municipalities, shall take place on the preceding Friday, at the times and places, and in the manner prescribed by law. R. S. O. 1877, c.175, s. 41.

Clerk to preside at nomination.

Returning officer.

45. The clerk of the municipality shall preside at the meeting for the nomination of candidates for the offices of reeve and councillors for such municipality, and shall be the returning officer at all elections after the first election. R. S. O. 1877, c. 175, s. 42.

Polling day.

46. The electors of every such municipality shall elect annually, on the first Monday in January, the members of the council of the municipality, except such members as may have been elected by acclamation on the nomination day. R. S. O. 1887, c. 175, s. 43.

Term of office.

47. The persons so elected shall hold office until their successors are elected and sworn into office. R. S. O. 1877, c. 175, s. 44.

Trial of controverted elections.

48. The provisions of law for the trial of controverted elections, applicable to councillors of townships in counties, shall apply to the members of the council of any municipality formed under this Act. (*b*) R. S. O. 1877, c. 175, s. 45.

(*a*) See *Reg. ex rel. Londry* v. *Plummer*, 15 C. L. J. N. S. 138.

(*b*) The County Judges of Algoma have jurisdiction to try Municipal Controverted Election Cases. See *Reg. ex rel. Londry* v. *Plummer*, 15 C. L. J. N. S. 138.

Vacancy in Council, how filled.

49. In case the seat of any member of the council becomes vacant by death, resignation, or a continued absence from meetings of the council for a period of six months, it shall be the duty of the council to direct a new election to be held for the purpose of supplying such vacancy. R. S. O. 1877, c. 175, s. 46.

Who to preside at meetings of the Council.

50. The reeve shall preside at all meetings of the council and, in the event of his absence, the council shall choose from among their number a person to preside, and, in such case, the said person so presiding shall have all the powers and exercise all the functions apertaining to the reeve. R. S. O. 1877, c. 175, s. 47.

Reeves to be Justices of the Peace.

51. The reeves of the various municipalities shall be, *ex officio*, Justices of the Peace, and shall have the like powers as are exercised by other Justices of the Peace in this Province. R. S. O. 1877, c. 175, s. 48.

POLICE VILLAGES.

Erection of police villages.

52. On the petition of thirty of the inhabitants of a village in any of the said territorial districts containing one hundred inhabitants at least, the Lieutenant-Governor in Council may, by proclamation, erect the same into a police village, and assign thereto such limits as seem expedient. R. S. O. 1877, c. 175, s. 49.

Rev. Stat. c. 184, ss. 638-670, to apply to police villages.

53. The provisions of *The Municipal Act* relating to police villages or their officers shall apply to the police villages erected under the preceding section, except where inconsistent with this Act. R. S. O. 1877, c. 175, s 50.

Qualification of electors, and elections in police villages.

54. The electors of any such police village shall be required to have the same qualification in respect to such village as the electors of the said township municipalities; and the elections for police trustees shall be held on the same days and in the same manner as elections for councillors. R. S. O. 1877, c. 175, s. 51.

Qualification of police trustees.

55. Any elector of such police village resident therein may be elected as a police trustee, unless disqualified on account of holding an office inconsistent with the position of police trustee. R. S. O. 1877, c. 175, s. 52.

Lieutenant-Governor in Council may

56.—(1) The Lieutenant-Governor in Council may, by proclamation, annex to any municipality formed as aforesaid

annex to certain municipalities territory adjacent thereto, and form two into one.

any territory lying adjacent thereto, and may, upon the application of two or more adjacent municipalities, form the same, either with or without additional area, into one municipality.

(2) In any such case the Lieutenant-Governor may fix the time at which the annexation or union shall take effect, and also the time when the first election shall take place, and the name by which the municipality shall be called. R. S. O. 1877, c. 175, s. 53.

(3) The provisions of this section shall apply to any municipality or municipalities created by Act of the Legislature in any provisional judicial, temporary judicial, or territorial district, and to any territory lying adjacent thereto. 47 V. c. 33, s. 2.

ALGOMA AND THUNDER BAY.

Judge to decide disputes as to validity of by-laws, etc.

57. If any dispute at any time arises as to the validity of any by-law, or resolution, or order of any municipality in the provisional judicial districts of Algoma and Thunder Bay, the same shall be referred to the judge of the district, whose decision thereon shall be final, and the said judge shall have the power of enforcing his decision, if necessary, by a writ or writs under his hand and seal, to be directed to the proper sheriff adapted to the purposes intended. R. S. O. 1877, c. 175, s. 55.

An Act respecting the Registration of Municipal and certain other Debentures.

R. S. O. Cap. 186.

Short title, s. 1.
Registration, ss. 2-4.
Returns to Provincial Secretary, ss. 5, 6.
By-laws, how verified, s. 7.
Inspection of books and returns, s. 8.
Fees of Registrars, s. 9.
Sanction of Lieutenant-Governor to by-laws, s. 10.
Application of Act, s. 11.
Penalties, s. 12.
Debentures not impeachable against *bona fide* holder, s. 13.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Debentures Registration Act.*" R. S. O. 1877, c. 176, s. 1.

Certified copies of all by-laws under which debentures are intended to be issued, to be transmitted to the proper registrar, etc.

2. It shall be the duty of the clerk or person acting as such, of every municipal or provisional municipal corporation, and of the clerk or secretary, or person acting as such, of any other corporate body, within two weeks after the final passing of any by-law made and passed by such corporation, for the purpose of raising money by the issue of debentures, and before the sale or contract for sale of any such debentures issued or intended to be issued thereunder, to transmit to the registrar of the registry division in which such municipal corporation or other corporate body, or its principal office, is situated, a copy duly certified, as hereinafter provided, of each and every by-law made and passed as aforesaid by such municipal or provisional municipal corporation, or other corporate body, together with a return in the form specified in the Schedule A, hereunto annexed, shewing the title or objects of each such by-law, the amounts to be raised thereunder, the number of debentures to be issued thereunder, the amounts thereof respectively, the dates at which the same respectively fall due, the assessed value of the real and personal estate belonging to such corporation or company, the assessed value of the real and personal estate of the municipality, and the amount of the yearly rate in the dollar to liquidate the same. R. S. O. 1877, c. 176, s. 2.

Registrar to file such by-laws, and to keep books with copies of the returns required by section 2.

3. The registrar of the registry division in which such municipal corporation or other corporate body or its principal office is situated, shall receive and file in his office the several by-laws required to be transmitted to him as hereinbefore provided, and shall cause to be entered in a book provided for that purpose, true and correct copies of the returns required by the preceding section. R. S. O. 1877. c. 176, s. 5.

If requested, the registrar may register the name of such holder of any debenture and registration to be *prima facie* evidence.

4. The registrar of each registry division, as aforesaid, shall provide a book of registration, wherein he shall, at the request of the orginal holder or holders, or any subsequent transferee or transferees thereof respectively, from time to time, cause to be entered and registered the name of such original holder or holders, or of such subsequent transferee or transferees, and such holder or last registered transferee in such book of registration shall be deemed *prima facie* the legal owner and possessor thereof. R. S. O. 1877, c. 176, s. 6.

Return to be made to provincial secretary.

5. The clerk, or person acting as such, of every municipal or provisional municipal corporation, and the clerk or secretary, or person acting as such, of any other corporate body (excepting such as are in and by this Act excepted), shall, on or before the 10th day of January in each year, transmit to the Provincial Secretary a return made up to the 31st day of December then last past, in the form specified in the Schedule B hereunto annexed, shewing the name of the municipal or provisional municipal corporation, or other corporate body,—the amount of its debt, if any, distinguishing the amount of debt incurred under the Municipal Loan Fund Acts, if any, from the remainder of its debt—the assessed value of the real and personal estate belonging to such corporation or company, or the assessed value of the real and personal estate of the municipality, or both, as the case may be—the total rates, if any, per dollar, assessed on such last-mentioned property for all purposes, and the amount of interest due by the corporation or company, or by the municipality. R. S. O. 1877, c. 176, s. 3.

Provincial secretary to compile tables from such returns and lay them before the Legislative Assembly.

6. The Provincial Secretary shall annually compile, from the returns so transmitted, a statement in tabular form, shewing the names of the several corporations in one column, and the contents of their respective returns against their respective names in other columns, corresponding to those in the said Schedule B; and he shall cause copies thereof to be laid before the Legislative Assembly within the first fifteen days of the Session next after the completion of the same, or if the Legislative Assembly is sitting when the same is completed, as soon as may be after such completion. R. S. O. 1877, c. 176, s. 4.

Mode in which by-laws shall be certified.

7. All by-laws mentioned in section 2 of this Act shall be certified and authenticated by the seal of the municipal corporation, and by the signature of the head thereof or of the person presiding at the meeting at which the original by-law has been made and passed, and also by that of the clerk of the corporation; and all by-laws of other corporate bodies shall be attested and authenticated by the seal of the corporate body and by the signature of the head thereof. R. S. O. 1877, c. 176, s. 7.

By-laws, returns and books of entry in registry office, to be

8. The certified copies of all by-laws hereinbefore referred to and transmitted as aforesaid, and also the returns in section 2 of this Act mentioned, and the book or books of

entry of such returns and of registration, shall be open to public inspection and examination, and access had thereto at all seasonable times and hours upon payment of certain fees as hereinafter provided. R. S. O. 1877, c. 176, s. 8. Open to inspection.

9. The following fees shall be paid to registrars under this Act: Fees payable under this Act.

	$ cts.
For registration of each certified copy of By-laws, the sum of	2 00
For registration of any Returns as prescribed in Schedule A, for each such Return, the sum of	1 00
For registration of the name of holder or transferee of any number of debentures not exceeding five, the sum of	0 25
Over five and not exceeding fifteen, the sum of	0 50
Over fifteen and not exceeding thirty, the sum of	0 75
Upwards of thirty, the sum of	1 00
For making search, inspecting each copy of By-law, and examining entries connected therewith	1 00

R. S. O. 1877, c. 176, s. 9.

10. In all such cases as require the submission of any by-law to the Lieutenant-Governor for his sanction, such sanction must first be obtained to bring the same within the meaning of the words "final passing thereof" in section 2 of this Act. R. S. O. 1877, c. 176, s. 10. Meaning of term "final passing," as to by-laws to be submitted to the Lieutenant-Governor.

11. The foregoing sections of this Act shall not extend to the by-laws or debentures thereunder, of any railway company or any ecclesiastical corporation heretofore incorporated or hereafter to be incorporated, or the debentures issued by any religious denomination in its corporate capacity. R. S. O. 1877, c. 176, s. 11. Act not to extend to railway companies or ecclesiastical corporations, etc.

12. Any clerk or secretary as aforesaid, of any municipality or corporate body as aforesaid, who neglects to perform, within the proper period, any duty devolving upon him in virtue of this Act, shall be subject to a fine of $200, or, in default of payment thereof, to imprisonment until such fine is paid, but for a period not exceeding twelve months, to be prosecuted for in the name of the Attorney-General of Ontario, in any Court of competent jurisdiction. R. S. O. 1877, c. 176, s. 12. Penalty on officers of corporations neglecting their duties under this Act.

13. Any such debenture issued as aforesaid shall not be impeachable in the hands of a *bona fide* holder for value without notice, (*a*). R. S. O. 1877, c. 176, s. 13. When not impeachable.

(*a*) See sec. 351, *et seq* of the Municipal Act.

SCHEDULE A.

RETURN as required by Chapter 186 of The Revised Statutes of Ontario, entitled, *An Act respecting the Registration of Municipal and certain other Debentures*, of Debentures issued by (*here insert title of Corporation*).

1	2	3		4	5		6		7
Title or Objects of the By-law.	Amount to be raised.	Number of Debentures and Amounts.		Dates when Payable.	Assessed value of Real and Personal Estate belonging to such Corporation (*or* Company).		Assessed value of the Real and Personal Estate of the Municipality of (Town, Township, Count , City *or* Village, *as the case may be*).		Amount of yearly rate in the $ to liquidate same.
		Number.	Amounts.		Real.	Personal.	Real.	Personal.	

Dated at this day of A. D. 18

R. S. O. 1877, c. 176, *Sched. A.*

SCHEDULE B.

RETURN as required by Chapter 186 of The Revised Statutes of Ontario, entitled *An Act respecting the Registration of Municipal and certain other Debentures*, of Debentures issued by (*here insert title of Corporation*).

LIABILITIES.			Assessed value of Real and Personal Estate belonging to the Body Corporate.		Assessed value of the Real and Personal Estate of the Municipality.		Total rates Assessed for all purposes.	Interest due by the Corporation (*or* Company, *or* Municipality).
Under Municipal Loan Fund Acts.	All other Liabilities.	Total Liabilities.	Real.	Personal.	Real.	Personal.		

R. S. O. 1877, c. 176, *Sched. B.*

R. S. O. cap. 187.

An Act respecting Public Meetings.

PUBLIC MEETINGS DEFINED, ss. 1-3.
Notices to constitute, ss. 4-8.
SHERIFF, MAYOR, OR MAGISTRATES TO ATTEND MEETING CALLED BY THEM, s. 9.
PROCEDURE AT MEETING, s. 10.
POWERS OF CHAIRMAN, ss. 11, 12.
SPECIAL CONSTABLES, s. 13.
LIMITATION OF ACTIONS, s. 14.

Preamble.

IT being the undoubted right of Her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so in compliance with the express direction of law, but at such other times as they may deem it expedient so to meet for the consideration and discussion of matters of public interest, or for making known to their Gracious Sovereign or Her Representative in this Province, or to both or either of the Houses of the Imperial or Dominion Parliaments, or to the Provincial Legislature, their views respecting the same, whether such be in approbation or condemnation of the conduct of public affairs; and it being expedient to make legislative provision for the calling and orderly holding thereof, and the better preservation of the public peace at the same;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

"Public meetings" within the protection of this Act.

1. All public meetings of the inhabitants or of any particular class of the inhabitants of any district, county, riding, city, town, township, or ward in this Province, which are required by law, and summoned or called in the manner hereinafter by section 4 of this Act prescribed, shall be and be deemed to be public meetings within the meaning of this Act. R. S. O. 1877, c. 177, s. 1.

"Public meetings" called by sheriff or two magistrates to be within protection of this Act.

2. All public meetings of the inhabitants or of any particular class of inhabitants of any district, county, riding, city, town, township, or ward in this Province, called by the sheriff of any such district or county, or by the mayor or other chief municipal officer of any such city or town respectively, in the manner hereinafter by section 5 of this Act prescribed, upon the requisition of any twelve or more of

the freeholders, citizens or burgesses of the district, county, riding, city, town, township, or ward, having a right to vote for members to serve in the Legislative Assembly in respect of the property held by them within the district, county, riding, city, town, township, or ward respectively, and all such meetings called by any two or more Justices of the Peace resident in any such district, county, riding, city, town, township, or ward respectively, upon a like requisition from twelve or more of such freeholders, citizens or burgesses, shall be and be deemed to be public meetings within the meaning of this Act. R. S. O. 1877, c. 177, s. 2.

"Public meetings" declared by two magistrates to be within the protection of this Act to be so.

3. All public meetings of the inhabitants or of any particular class of the inhabitants of any district, county, riding, city, town, township, or ward in this Province, declared to be public meetings within the meaning of this Act by any two Justices of the Peace resident in such district, county, riding, city, town, township, or ward, in the manner hereinafter by section 6 of this Act prescribed, shall be and be deemed to be public meetings within the meaning of this Act. R. S. O. 1877, c. 177, s. 3.

Manner of bringing meetings required by law within protection of this Act.

4—(1) In every notice or summons for calling together any such public meeting as in section 1 of this Act is mentioned, there shall be contained a notice that such meeting, and all persons attending the same, will be within the protection of this Act, and requiring all persons to take notice thereof and govern themselves accordingly.

Notice.

(2) Such part of the notice or summons may be in the form or to the effect following:

And be it known, that the meeting to be held in pursuance hereof is called in conformity with the provisions of Chapter 187 of *The Revised Statutes of Ontario* entitled *An Act respecting Public Meetings;* and that the said Meeting and all persons attending the same will therefore be within the protection of the said Act, of all which premises, all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

R. S. O. 1877, c. 177, s. 4.

Manner of bringing meetings called by sheriffs, etc., within the protection of this Act.

5. The notice to be issued by the sheriff of any county, or by the mayor or other chief municipal officer of any city or town, or by two or more Justices of the Peace, for calling any such public meeting as in section 2 of this Act is mentioned:

1. Shall be issued at least three days before the day upon which such meeting is appointed to be held; and shall set forth

(*a*) The names of the requisitionists, or of a competent number of them;

(*b*) That such meeting is called in conformity with the provisions of this Act; and

(*c*) That such meeting, and all persons attending the same, will be within the protection of this Act, and that all persons are required to take notice thereof and govern themselves accordingly.

2. Such notice may be in the form or to the effect of Schedule A to this Act. R. S. O. 1877, c. 177, s. 5.

By private persons within the protection of this Act.

6. Upon information on oath, before any Justice of the Peace, that any public meeting of the inhabitants, or of any particular class of the inhabitants of any district, county, riding, city, town, township or ward, not being a public meeting of the description mentioned in section 1 of this Act, or a public meeting called in the manner referred to in section 2 of this Act, is appointed to be held at any place within the jurisdiction of such Justice, and that there is reason to believe that great numbers of persons will be present at such meeting: any two Justices of the Peace having jurisdiction within the district, county, city, or town within which such meeting is appointed to be held, may give notice of such meeting, and may declare the same, and declare all persons attending the same, within the protection of this Act, and require all persons to take notice thereof and govern themselves accordingly, and such notice or declaration may be in the form of Schedule B to this Act. R. S. O. 1877, c. 177, s. 6.

Sheriff or Justices, etc., calling meetings on requisition to give certain notices.

7. Every sheriff, mayor, Justice of the Peace, or other person who calls any such public meeting as is mentioned in section 2 of this Act, shall give public notice thereof, as extensively as he reasonably can, by causing to be posted and distributed throughout the district, county, riding, city, town, township, or ward for which the same is called, a sufficient number of printed or written copies of the notice calling the same. R. S. O. 1877, c. 177, s. 7.

Justices declaring meetings to

8. The Justices of the Peace who declare any public meeting about to be held to be a public meeting within the pro-

tection of this Act, as in section 3 of this Act, mentioned, shall give public notice of its having been so declared, by causing to be posted and distributed throughout the district county, riding, city, town, township or ward for which the same is so called, as many printed or written copies of the notice or declaration issued by them in that behalf as may be reasonably necessary for that purpose, and as the time appointed for the holding such meeting reasonably admits. R. S. O. 1877, c. 177, s. 8.

be within protection of Act to give certain notices.

9. Every sheriff, mayor, Justice of the Peace, or other person who either calls any public meeting under the provisions of section 2 of this Act, or declares any meeting called by others to be a public meeting within the protection of this Act, under the provisions of section 3 hereof, shall attend such meeting, and whether such sheriff, mayor, Justice of the Peace, or other person is appointed by such public meeting to take the chair and preside over the same, or not, every such sheriff, mayor, Justice of the Peace, and other person shall continue at or near the place appointed for holding such public meeting, until the same has dispersed, and shall afford all such assistance as is in his power in preserving the public peace thereat. R. S. O. 1877, c. 177, s. 9.

Sheriffs and Justices calling and declaring meeting under this Act to attend the same.

10. Every person required by law, or who has, in the usual way, been appointed at such public meeting to preside over the same, shall commence the proceedings of the meeting, by causing the summons or notice calling the meeting, or the declaration whereby the same is declared to be a public meeting, under the protection of this Act, to be publicly read. R. S. O. 1877, c. 177, s. 10.

Chairman to read requisition and make proclamation for the preservation of order.

11. Any person required by law, or who has been appointed at such meeting in the usual way to preside over the same shall cause order to be kept at such meetings, and for that purpose may, by oral direction or otherwise, cause any person who attempts to interrupt or disturb such meeting to be removed to such a distance from the same as may effectually prevent such interruption or disturbance, and by an instrument in writing under his hand, on his own view, may adjudge any person who so attempts to interrupt or disturb such meeting guilty of such attempted interruption or disturbance, upon which conviction any Justice of the Peace may, by warrant under his hand, forthwith commit such person to the common gaol of the county or district, or to

Chairman to remove disorderly persons, and convict on view of disturbance.

any other place of temporary confinement that such Justice may appoint, for any period not exceeding forty-eight hours from the time of commitment signed, and until the lawful costs of the constable and gaoler for the arrest, transmission and detention of such person are paid or satisfied. R. S. O. 1877, c. 177, s. 11.

To call on Justices of the Peace, constables, etc., for assistance.

12. For the purpose of keeping the peace and preserving good order at every such public meeting, the persen required or appointed to preside at such meeting as aforesaid may command the assistance of all Justices of the Peace, constables, and other persons to aid and assist him in so doing. R. S. O. 1877, c. 177, s. 12.

Justices to swear in special constables on requisition of chairman.

13. Any Justice of the Peace present at any such meeting upon the written application of the person so required or appointed to preside at the same, shall swear in such a number of special constables as such Justice may deem necessary for the preservation of the public peace at such meeting. R. S. O. 1877, c. 177, s. 13.

Action to be brought within 12 months.

14. Every action to be brought against any person for any thing by him done under authority of this Act, must be brought within twelve months next after the cause of such action accrued. R. S. O. 1877, c. 177, s. 14.

SCHEDULE A.

(*Section* 5.)

TO THE INHABITANTS OF THE COUNTY OF A, (*or as the case may be*), AND ALL OTHERS HER MAJESTY'S SUBJECTS WHOM IT DOTH OR MAY IN ANYWISE CONCERN :

Whereas I, *A. B.*, Sheriff of, etc., *or* we, *C. D.* and *E. F.*, two (*or whatever the number may be*) of Her Majesty's Justices of the Peace for the County (*or* District) of A, resident within the said County (*or* District) having received a requisition , signed by *I, J, K, L*, etc., etc., (*inserting the names of at least twelve of the requisitionists and as many more as conveniently may be, and mentioning the number of the others; thus*) and fifty-six (*or as the case may be*) others, who (*or* twelve of whom) are freeholders of the said County (*or* District) (*or* citizens of the said City) having a right to vote for members to serve in the Legislative Assembly in respect of the property held by them within the said County (*or* District *or* City, *etc., as the case may be*) requesting me (*or* us) to call a public meeting (*here recite the requisition*): And whereas I (*or* we) have determined to comply with the said requisition :

Now, therefore, I (*or* we) do hereby appoint the said meeting to be held at (*here state the place*) on , the day of next (*or* instant), at of the clock in the noon, of which all persons are hereby required to take notice. And whereas the said meeting has been so called by me (*or* us) in conformity with the provisions of chapter 187 of the Revised Statutes of Ontario, entitled *An Act respecting Public Meetings*, the said meeting, and all persons who attend the same, will therefore be within the protection of the said Act, of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness my hand (*or* our hands) at , in the of , this day of , 18 .

A. B., Sheriff,
or C. D., J. P.
E. F., J. P.

R. S. O. 1877, c. 177, *Sched.* A.

SCHEDULE B.

(*Section* 6.)

TO THE INHABITANTS OF THE COUNTY OF A. (*or as the case may be*), AND ALL OTHERS HER MAJESTY'S SUBJECTS WHOM IT DOTH OR MAY IN ANYWISE CONCERN:

Whereas, by information on oath taken before *D. E.*, Esquire, one of Her Majesty's Justices of the Peace for the County of C (*or* City *or* District, *or as the case may be*), within which the meeting hereinafter mentioned is appointed to be held, it appears that a Public Meeting of the inhabitants (*or* householders, etc., *as the case may be*) of the County of G (*or as the case may be*) is appointed to be held at , in the said County (*or as the case may be*), on , the day of next (*or* instant), at of the clock in the noon (*or* at some other hour on the same day), and that there is reason to believe that great numbers of persons will be present at such meeting; and whereas it appears expedient to us *C. D.* and *E. F.*, two (*or whatever the number may be*) of Her Majesty's Justices of the Peace having jurisdiction within the said County (*or as the case may be*), that, with a view to the more orderly holding of the said meeting, and the better preservation of the public peace at the same, the said meeting, and all persons who may attend the same, should be declared within the protection of chapter 187 of the Revised Statutes of Ontario, entitled *An Act respecting Public Meetings:*

Now, therefore, in pursuance of the provisions of the said Act, and the authority in us vested by virtue of the same, we, the said Justices, do hereby give notice of the holding of the said meeting, and do hereby declare the said public meeting, and all persons who attend the same, to be within the protection of the said Act.

Of all which premises all manner of persons are hereby in Her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly.

Witness our hands at , in the of this day of 18 .

C. D., J. P.
E. F., J. P.
&c.

R. S. O. 1877, c. 177, *Sched.* B.

R. S. O. cap. 188.

An Act to exempt Firemen from certain Local Services.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Formation of fire companies.

1. It shall be in the discretion of the corporate authorities or boards of police in any city or town, or place in which the formation of companies of firemen is by law authorized and regulated, or, where there are no such authorities or board, it shall be in the discretion of the Justices of the Peace of the district or county in which such city or town is situate, in General Sessions assembled, or the majority of them, to consent to the formation of a fire company in such city, town or place, or to defer the same until circumstances in their opinion render it expedient that such company should be formed; and they may also, in their discretion, from time to time, discontinue or renew any such company or companies. R. S. O. 1877, c. 178, s. 1.

Discontinuance or renewal.

Certificated members of such company to be exempted from serving as jurors, and from certain other offices

2. Whenever any company or companies of firemen have been regularly enrolled in any such city, town or place, the corporate authorities, or board of police in such city or town, or the Justices of the Peace for the district or county, or the majority of them, as aforesaid, respectively, being satisfied of the efficiency of such persons and accepting their enrolment, shall direct the clerk of the peace for the district or county to grant to each member of such company a certificate that he is enrolled on the same, which certificate shall exempt the individual named therein, during the period of his enrolment, and his continuance in actual duty as such fireman,

from serving as a juryman or a constable, and from all municipal offices. R. S. O. 1877, c. 178, s. 2.

Such exemption may be taken away in case of misconduct on the part of any member of any such company.

3. The corporate authorities or board of police in any city or town, or where there are no such authorities or board, the Justices of the Peace for the district or county, or the majority of them, at any general or adjourned sessions, upon complaint to them made of neglect of duty, by any member of such fire company, shall examine into the same; and for any such cause, and also, in case any member of such company is convicted of a breach of any of the rules legally made for the regulation of the same, may strike off the name of any such member from the list of the company, and thenceforward the certificate granted to such member, as aforesaid, shall have no effect in exempting him from any duty or service in the next preceding section of this Act mentioned. R. S. O. 1877, c. 178, s. 3.

Firemen having served seven years exempted from serving in certain offices.

4. When any member of any company of firemen, regularly enrolled in any city, town, or place in which the formation of companies of firemen is by law authorized and regulated, has regularly and faithfully served for the space and term of seven consecutive years in the same, the said member shall be entitled to receive, upon producing due proof of his having served seven consecutive years as aforesaid, a certificate from the clerk of the peace of the district or county in which he resides, or from the clerk of the corporate body or board of police under whose authority the said company has been established, that he has been regularly enrolled and served as a member of the said fire company for the space of seven years; and such certificate shall exempt the individual named therein from serving as a constable, and from all municipal offices, but this shall not exempt such fireman from serving as a juryman. R. S. O. 1877, c. 178, s. 4.

Firemen having served seven years entitled to a certificate to that effect.

5. The municipal council of a city wherein the formation of companies of firemen is by law authorized and regulated, may, by by-law, enact, that when a member of a company of firemen regularly enrolled in such city has regularly and faithfully served in such company for the space and term of seven years consecutively, such member, upon producing due proof of his having so served, shall receive a certificate from the clerk of the council of the city or the clerk of the corporate body under whose authority the company was estab-

lished, that he has been regularly enrolled and served as a member of the said fire company for the space of seven years, R. S. O. 1877, c. 178, s. 5.

Such certificate shall exempt from statute labour tax and from serving as jurors.

6. The certificate shall exempt the individual named therein from the payment of any personal statute labour tax thereafter, and from serving as a juror on the trial of any cause in any Court of Law within this Province. R. S. O. 1877, c. 178, s. 6.

[*See also as to exemption of firemen from jury services, Rev. Stat. c.* 52, *s.* 6 (31); *and as to exemption from municipal offices, Rev. Stat. c.* 184, *s.* 78.]

R. S. O. cap. 189.

An Act to provide for the establishment of Free Libraries.

SHORT TITLE, s. 1.
ESTABLISHMENT OF FREE LIBRARIES, s. 2.
BOARD OF MANAGEMENT, s. 3.
Duties of Board, s. 4.
By-laws, s. 5.
Yearly estimates, s. 6.
Accounts, s. 7.
SPECIAL RATE FOR LIBRARY PURPOSES, s. 8.
ADMISSION TO BE FREE, s. 9.
TRANSFER OF PROPERTY BY MECHANICS' INSTITUTES, ETC., ss. 10, 11.
ACT TO BE READ WITH MUNICIPAL AND ASSESSMENT ACTS, s. 12.
FORMS, s. 13.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Free Libraries Act.*" 45 V. c. 22, s. 1.

Establishment of free libraries.

2.—(1) A free library may be established in any city, town, or incorporated village, in manner hereinafter provided.

(2) Where a free library is so established, there may, without any proceedings for the purpose under this Act, be connected with the library, a free news-room, or museum, or both; and there may be established a branch library, or branch libraries, and a branch news-room, or branch news-rooms, in the municipality.

(3) In case a petition is presented to the council of a city, town, or incorporated village, signed by not less than one hundred electors in the case of a city, or not less than sixty in the case of a town, or not less than thirty in the case of an incorporated village, praying for the establishment of a free library under this Act, the council may pass a by-law giving effect to the petition, with the assent of the electors qualified to vote at municipal elections given before the final passing of the by-law as provided by the municipal law. 45 V. c. 22, s. 2 (2, 3).

(4) A by-law under this Act, which has been so assented to by the electors, may be passed at the first or any meeting of the municipal council thereafter, without waiting for the expiration of fourteen days or any other time, unless a petition for a scrutiny has been presented in the meantime, as provided by section 328 of *The Municipal Act.* Rev. Stat. c. 184.

(5) After a by-law has been assented to, it shall be the duty of the council for the time being to pass the same without unnecessary delay, whether such council is or is not the same council which submitted the by-law to the electors. 46 V. c. 19, ss. 3, 4.

(6) In case the vote of the electors is adverse to the by-law, no new by-law for the same purpose shall afterwards be passed by the council to be submitted to the electors within the same municipal year. 45 V. c. 22, s. 2 (4).

3.—(1) In case of the establishment of a free library under this Act, the general management, regulation, and control of the library, and of the news-room and museum (if any), shall be vested in and exercised by a board to be called the board of management; which board shall be a body politic and corporate, and shall be composed of the mayor of the city or town, or the reeve of the village, and three other persons to be appointed by the council, three by the public school board, or the board of education, of the municipality, and two by the trustees of the separate school, if any. Appointment of Board of Management.

(2) No person who is a member of the body entitled to appoint shall be qualified to be a member of the board of management.

(3) Of the representatives appointed by the council, and the public school board, or board of education and separate

school trustees, respectively, one shall retire annually, but may be re-appointed.

(4) Of the three members first appointed by the council, and public school board, or board of education, respectively, one shall hold office until the 1st day of February after his appointment, one until the 1st day of February in the following year, and one until the same day in the year next thereafter; and of the two members first appointed by the separate school trustees, one shall hold office until the 1st day of February after his appointment, and one until the 1st day of February of the following year; but every member of the board of management shall continue in office after the time named until his successor is appointed.

(5) In case of a vacancy by the death or resignation of a member, or from any cause other than the expiration of the time for which he was appointed, the member appointed in his place shall hold office for the remainder of his term.

(6) Subject to these provisions, each of the members appointed by the council, or public school board, or board of education, shall hold office for three years from the 1st day of February in the year in which he is appointed; and each of the members appointed by separate school trustees, for two years from the 1st day of February in the year in which he is appointed.

(7) The first appointment of members of the board shall be made at the first meeting of the appointing council or board, after the final passing of the by-law. The annual appointments thereafter shall be made at the first meeting of the appointing council or board, after the first day of January in every year; and any vacancy arising from any cause, other than the expiration of the time for which the member was appointed, shall be filled at the first meeting thereafter of the appointing council or board. But if for any reason appointments are not made at the said dates the same shall be made as soon as may be thereafter.

(8) The board of management shall elect one of their number as chairman, who shall hold office for one year; he shall preside at meetings of the board when present; in his absence a chairman may be chosen *pro tempore*. The chairman shall have the same right of voting as the other members of the board, and no other.

(9) The board shall meet at least once every month, and at such other times as they may think fit.

(10) The chairman or any two members may summon a special meeting of the board by giving at least two days' notice in writing to each member, specifying the purpose for which the meeting is called.

(11) No business shall be transacted at any general or special meeting unless four members are present.

(12) All orders and proceedings of the board shall be entered in books to be kept by them for that purpose, and shall be signed by the chairman for the time being.

(13) The orders and proceedings so entered and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of the orders and proceedings upon any judicial proceeding whatsoever. 45 V. c. 22, s. 3.

Duties of board.

4. Subject to the restrictions and provisions hereinafter contained, the board are, from time to time, to procure, erect, or rent the necessary buildings for the purposes of the library or of the library, news-room, and museum (as the case may be); to purchase books, newspapers, reviews, magazines, maps, and specimens of art and science, for the use of the library, news-room, and museum, and to do all things necessary for keeping the same in a proper state of preservation and repair; and to purchase and provide the necessary fuel, lighting, and other similar matters; and are to appoint and dismiss, as they see occasion, the salaried officers and servants employed. 45 V. c. 22, s. 4.

Board may make by-laws respecting use of library.

5—(1) The board may make by-laws or rules for the safety and use of the library, news-room, and museum, and for the admission of the public thereto; and for regulating all other matters and things whatsoever connected with the management of the library and of the news-room and museum (if any), and with the management of all property of every kind under their control for the purposes of this Act; and the board may impose penalties for breaches of the by-laws or rules, not exceeding $10 for any offence; and may from time to time repeal, alter, vary, or re-enact any such by-laws or rules.

(2) After such by-laws or rules have been published weekly for at least two weeks in a newspaper published in

the municipality, or in a newspaper circulated therein if no newspaper is published therein, the by-laws and rules so published shall be binding on all parties concerned; but any Judge or magistrate, before whom a penalty imposed thereby is sought to be recovered, may order a part only of such penalty to be paid, if he thinks fit.

(3) Nothing herein contained shall preclude the recovery of the value of articles or things damaged, or the amount of damage sustained, from parties liable for the same. 45 V. c. 22, s. 5.

Board to make yearly estimates.

6—(1) The board of management shall, in the month of March in every year, make up or cause to be made up, an estimate of the sums required to pay, during the ensuing financial year:

1. The interest of any money borrowed as hereinafter mentioned;
2. The amount of the sinking fund; and
3. The expense of maintaining and managing the libraries, news-rooms, or museums under their control, and of making the purchases required therefor.

(2) The board shall report their estimate to the council not later than the 1st day of April in each year. 45 V. c. 22, s. 6.

Board to keep regular accounts.

7. The board of management shall keep distinct and regular accounts of their receipts, payments, credits, and liabilities, and the accounts shall be audited by the auditors of the municipality, in like manner as other accounts of the municipality, and shall thereafter be laid before the council by the board of management. 45 V. c. 22, s. 7.

Special rate for library purposes.

8—(1) For the purpose of providing for the expenses necessary for carrying this Act into effect, the council of the municipality, in addition to all other rates and assessments levied and assessed for municipal purposes, shall levy and assess from year to year a special annual rate sufficient to furnish the amount estimated by the said board to be required as aforesaid, but not exceeding one half of a mill in the dollar, upon the assessed value of all ratable real and personal property, such rate to be called "The Free Library Rate."

(2) The council may also, subject as hereinafter provided, on the requisition of the board of management, raise by a special issue of debentures of the municipality to be termed "Free Library Debentures," such sums as may be required for the purpose of purchasing and erecting the necessary buildings, and, in the first instance, for obtaining books and other things required.

(3) During the currency of the debentures so issued the council shall withhold, and retain as a first charge on the said annual rate, such amount as shall be required to meet the annual interest of the debentures, and a sinking fund for the retirement thereof as the debentures become due, such sinking fund to be invested and dealt with as in the case of other municipal debentures.

(4) All moneys levied or raised as aforesaid shall be received by the treasurer of the municipality in the same manner as other municipal funds, and be paid out by him on the orders of the board; save as to the amount required to meet the interest and provide a sinking fund for debentures issued as aforesaid.

(5) It shall not be necessary to submit to the electors a by-law authorizing the issue of debentures, provided the annual sum required to meet the annual interest and sinking fund do not, with a reasonable allowance for annual expenses exceed the said limit of half a mill in the dollar. 45 V. c. 22, s. 8.

Admission to be free.

9. All libraries, news-rooms, and museums established under this Act shall be open to the public, free of all charge. 45 V. c. 22, s. 9.

Mechanics' Institutes may transfer property to corporation of municipality for the purposes of this Act.

10—(1) At any time after the adoption of this Act in any municipality, any Mechanics' Institute or Library Association in the municipality may by agreement with the board transfer to the corporation of the municipality, for the purposes of this Act, all or any property, real or personal, of the Institute or Association; but any transfer which, but for this section, the Institute or Association would not have authority to make, shall only be made in the manner provided by *The Act respecting Mechanics' Institutes and Art Schools.*

Rev. Stat. c. 173.

(2) In case the transfer is to be made on terms involving the assumption of any liability of the Institute or Associa-

tion, or the payment of any money in consideration of the transfer, the agreement shall not be binding unless approved of and consented to by by-law of the municipal council. 45 V. c. 22, s. 10.

Provisions where library, etc., of Mechanics' Institute transferred to board.

11. In case of any Mechanics' Institute transfering its library and reading-room, or either of them, to any board of management of a free library, under the next preceding section of this Act, if it is part of the agreement that the board shall thenceforward receive the appropriation from the Mechanics' Institute grant, which the Institute would otherwise receive, the board shall, on the condition (if any) mentioned in the agreement, be entitled to the like aid from the unappropriated moneys in the hands of the Treasurer of the Province in respect of such reading-room and library, or either of them, as such Mechanics' Institute would have received. 46 V. c. 19, s. 2.

Act to be incorporated with Municipal and Assessment Acts.

12. Upon the coming into operation of this Act in any municipality, it shall, as regards such municipality, be deemed to be incorporated with the Municipal and Assessment Acts from time to time affecting such municipality. 45 V. c. 22, s. 11.

Forms.

13. The forms in the schedule hereto may be used for the purposes of this Act, or any forms to the like effect, and the recitals contained in the said forms shall be deemed sufficient, any provisions in *The Municipal Act* to the contrary notwithstanding. 45 V. c. 22, s. 12.

Rev. Stat. c. 184.

SCHEDULE.

FORM A.

PETITION.

To the Municipal Council of

We, the undersigned electors of the said city of [*or as the case may be*], respectfully pray that a free library may be established in this municipality under *The Free Libraries Act*. 45 V. c. 22, Sch. Form A.

FORM B.

BY-LAW FOR ESTABLISHING A FREE LIBRARY WITH THE ASSENT OF THE ELECTORS.

A by-law to provide for the establishment of a free library in the city of [*or as the case may be*].

Whereas electors have petitioned the council of the said city of [*or as the case may be*], praying for the establishment of a free library under *The Free Libraries Act;*

Be it therefore enacted by the said municipal council of the said city of [*or as the case may be*] that, in case the assent of the electors is given to this by-law, a free library be established in this municipality in accordance with the provisions of *The Free Libraries Act.*

And be it further enacted that the votes of the electors be taken on this by-law on the day of , 18 , commencing at nine o'clock in the morning and continuing until five o'clock in the afternoon, at the undermentioned places: [*Here insert* (1) *the ward;* (2) *the polling sub-division;* (3) *the place for holding the poll and the name of the deputy returning officer.*]

That on the day of next, at his office in the , at o'clock in the noon, the [*mayor, reeve, or as the case may be*] shall appoint in writing, signed by him, two persons to attend to the final summing up of the votes by the clerk, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of this by-law, and a like number on behalf of the persons interested in and desirous of opposing the passage of this by-law.

That the clerk of the said municipal corporation shall attend at the at the hour of o'clock in the noon, on the day of , 18 , to sum up the number of votes given for or against the by-law.

Notice by Clerk.

The above is a true copy of a proposed by-law which will be taken into consideration by the council of after one month from the day of , 18 , being the date of the first publication thereof, and the polls for taking the votes of the electors will be held at the hour, day and places named in the said by-law.

45 V. c. 22, Sched. Form B.

FORM C.

BY-LAW FOR THE ISSUE OF FREE LIBRARY DEBENTURES WHERE THE ASSENT OF THE ELECTORS IS NOT REQUIRED.

A by-law authorizing the issue of debentures for the purposes of a free library.

Whereas a by-law of the municipal council of the city of [*or as the case may be*], was passed on the day of establishing a free library in this municipality under *The Free Libraries Act;*

And whereas a sum of $. is required for the purposes of acquiring a site, erecting buildings, etc. [*as the case may be*], for the said free library, as appears by the special estimate for that purpose furnished by the board of management to the council;

And whereas it will require the sum of $ annually for a period

of years, to pay the interest of the said debt, and the sum of $ annually during the said period for the forming of a sinking fund of per centum per annum for the payment of the debt created by this By-law, making in all the sum of annually as aforesaid;

And whereas it is necessary that such annual sum of shall in each year during the said period of years be charged on tne special rate mentioned in section 8 of the said Act.

Be it therefore enacted by the said Municipal Council of the said city [*or as the case may be*] of [*or as the case may be*], pursuant to the provisions of *The Free Libraries Act*;

That the Mayor [*or as the case may be*] of the said municipality may borrow on the credit of the said annual Library rate as aforesaid, and may issue Frec Library Debentures of the corporation to that amount in sums of not less than $100 each, and payable within years from thc date thereof, with interest at the rate of per centum per annum, that is to say in [*insert the manner of payment, whether in annual payments or otherwise*], such debentures to be payable at and to have attached to them coupons for the payment of interest.

That during years, the sum of shall be raised and retained annually for the payment of interest on said debentures, and also the sum of for the purpose of forming a sinking fund of per centum per annum for the payment of the principal of the said loan of in years, making in all the sum of to be raised and charged annually as aforesaid on the special Library rate unless the said debentures shall be sooner prid, for the purpose of paying the said sum of , with interest thereon as aforesaid.

45 V. c. 22, Sched. Form C.

FORM D.

FREE LIBRARY DEBENTURE.

No. Province of Ontario. $

[*Name of Municipality.*]

Under and by virtue of *The Free Libraries Act*, and of By-law No. of thc Corporation of passed under the powers in said Act contained.

The Corporation of promise to pay the bearer or in the sum of $ on the day of A.D. and the half yearly coupons hereto attached, as the same shall severally become due.

[L.S.]

A. B.
Mayor [*or as the case may be*]
C. D.
Treasurer.

45 V. c. 22, Sched. Form D.

R. S. O. cap. 190.

An Act to provide for the establishment and maintenance of Public Parks in Cities and Towns

SHORT TITLE, s. 1.
ESTABLISHMENT OF PARKS, s. 2.
PARKS TO BE OPEN TO PUBLIC, s. 3.
BOARD OF MANAGEMENT, ss. 4-11.
- Constitution of Board s. 5.
- Tenure of office, s. 6.
- Expenses, s. 7 (1).
- Restriction as to contracts, s. 7 (2).
- Employment of clerks and servants, s. 8.
- Books and accounts, ss. 9, 10.
- By-laws, s. 11.
- Acquiring land, ss. 13-16.
- Yearly estimates, s. 17 (1, 2,)

GRANTS TO MUNICIPALITY FOR PARK PURPOSES, s. 12.
SPECIAL RATE, s. 17 (3).
ISSUE OF DEBENTURES, s. 17 (4-10).
PROHIBITIONS AND PENALTIES, s. 18.
PRESERVATION OF ORDER, s. 19.
PROTECTION AND POWERS OF OFFICERS, s. 20.
LIMITATION OF ACTIONS, s. 21.
ACT TO BE READ WITH MUNICIPAL AND ASSESSMENT ACTS, s. 22.
FORMS, s. 23,

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Public Parks Act.*" 46 V. c. 20, s. 1.

Establishment of parks.

2—(1) A park, or a system of parks, avenues, boulevards and drives, or any of them, may be established in any city or town; and the same, as well as existing parks and avenues, may be controlled and managed in the manner hereinafter provided.

(2) In case a petition is presented to the council of any city signed by not less than 500 electors, or to the council of any town signed by not less than 200 electors, praying for the adoption of this Act, the council may pass a by-law, giving effect to the petition, with the assent of the electors qualified to vote at municipal elections, given before the final passing of the by-law as provided by the municipal law.

(3) In case the majority of the votes polled on the by-law are in favour thereof, the by-law shall be finally passed by the council at its next regular meeting held after the taking of such vote, or as soon thereafter as may be.

(4) In case the vote of the electors is adverse to the by-law, no new by-law for the same purpose shall afterwards be passed by the council, or submitted to the electors, within the same municipal year. 46 V. c. 20, s. 2.

Parks to be open to public.

3. All parks, boulevards, avenues, and drives, and approaches thereto, or streets connecting the same, in any city or town where this Act is adopted, shall be open to the public free of all charge, subject to such by-laws, rules, and regulations as the board may make as to the use thereof. 46 V. c. 20, s. 3.

Parks to be under control of Board of Park Management.

4—(1) In case of the adoption of this Act, the general management, regulation and control of all existing parks and avenues, and of all properties both real and personal, applicable to the maintenance of parks belonging to the city or town, and of all parks, avenues, boulevards, and drives which may thereafter be acquired and established under the provisions of this Act, shall be vested in and exercised by a board, to be called The Board of Park Management.

(2) The authority of the board shall not extend to any streets open at the time of the adoption of the Act, with the exception of streets which may be expressly specified in the by-law adopting the Act, or which at any time, or from time to time afterwards, in pursuance of an agreement between the council and the board, the council shall by by-law declare to be subject to this Act.

(3) Nothing in this Act contained shall authorize the board to assume possession or control of any exhibition park in or belonging to the city or town, without the consent of both the municipal council and of any electoral district society, agricultural or exhibition association, having an interest therein. 46 V. c. 20, s. 4.

Constitution of Board.

5. The board shall be a body politic and corporate, and shall be composed of the mayor of the city or town and of six other persons who shall be residents of the city or town, but not members of the council and shall be appointed by the council on the nomination of the mayor. 46 V. c. 20, s. 5.

Tenure of office.

6—(1) The appointed members of the board shall hold their office for three years, except in the case of the members of the first board, two of whom shall hold office until the

1st day of February in the year following the first appointments, two for one year, and two for two years, from said 1st day of February; said members retiring in rotation, two each year, the order of such retirement to be determined by lot among themselves at their first meeting; but every member of the board shall continue in office after the time named until his successor is appointed, and may be reappointed by the council.

(2) In case of a vacancy by the death or resignation of a member, or from any cause other than the expiration of the time for which he was appointed, the member appointed in his place shall hold office for the remainder of his term.

(3) Subject to these provisions, each of the appointed members shall hold office for three years from the 1st day of February in the year in which he is appointed.

(4) The first appointment of members of the board shall be made at the first regular meeting of the council held after the final passing of the by-law.

(5) Thereafter the appointments shall be made annually at the first meeting of the council held after its organization; and any vacancy arising from any cause other than the expiration of the time for which the member was appointed, shall be filled at the first meeting of the council held after the occurrence of the vacancy.

(6) The members of the first board, within ten days after their appointment, and on such day and hour as the mayor shall appoint (notice of the appointment, in writing, signed by the mayor, having been duly sent to the address of each member at least one week before the day and hour named therein), shall meet at the office of the mayor for the purpose of organization, shall elect one of their number chairman, and shall appoint a secretary, who may be either one of their own members, or any other person they may select.

(7) If for any reason appointments are not made at the said dates, the same shall be made as soon as may be thereafter.

(8) The chairman and secretary shall hold their places at the pleasure of the board, or for such period as the board shall prescribe.

(9) When the chairman or secretary is absent, or unable to act, the board may appoint a chairman or secretary *pro tempore*.

(10) The board shall meet at least once every month, and at such other times as they may think fit.

(11) The chairman or any two members may summon a special meeting of the board, by giving at least two days notice in writing, to each member, specifying the purpose for which the meeting is called.

(12) The office of any member of the board who shall be absent from the meetings of the board for three successive months, without leave of absence from the board, or without reasons satisfactory to the board, shall be declared vacant by the board, and notice thereof shall be given to the council at the next meeting of the council.

(13) No business shall be transacted at any special or general meeting, unless four members are present.

(14) All orders and proceedings of the board shall be entered in books to be kept by them for that purpose, and shall be signed by the chairman for the time being.

(15) The orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and the books may be produced and read upon any judicial proceedings as evidence of the orders and proceedings. 46 V. c. 20, s. 6.

Payment of expenses of Board.

7.—(1) The members of the board shall serve without compensation. Each member shall be entitled to receive his actual disbursements for expenses in visiting or superintending the park when the visit or service is made or rendered by direction of the board.

Members of the Board or of the Council not to be interested in any contract.

(2) No member of the board, or alderman, or member of the city or town council, shall have any contract with the board, or be pecuniarily interested, directly or indirectly, in any contract or work relating to the park or park property. 46 V. c. 20, s. 7.

Board may employ clerks, etc.

8. The board may employ all necessary clerks, agents, and servants, and may prescribe their duties and compensation. 46 V. c. 20, s. 8.

Books, etc., to be kept in the office of the Board.

9.—(1) The board shall keep in the office of the board all books, maps, plans, papers and documents used in and pertaining to the business of the board.

(2) All books kept by the board shall be open to the

examination of the members of the council, and of any other person or persons appointed for that purpose by the council. 46 V. c. 20, s. 9.

Board to keep regular accounts.

10. The board shall keep distinct and regular accounts of their receipts, payments, credits, and liabilities; and the accounts shall be audited by the auditors of the municipality in like manner as other accounts of the municipality, and shall thereafter be laid before the council by the board. 46 V. c. 20, s. 10.

Power to make by-laws, etc.

11.—(1) The board may, from time to time, pass by-laws for the use, regulation, protection and government of the park or parks, approaches thereto, and streets connecting the same, not inconsistent with the provisions of this Act or any law of the Province.

(2) The board shall, with respect to street railways, have the powers conferred upon municipal councils by *The Street Railway Act*, so far as relates to any streets or approaches under the control of the board; but no street or other railway shall enter upon or pass through the park or parks.

Rev. Stat. 171.

(3) The board shall have power to license hacks and other vehicles for use in the park or parks; and to let from year to year, or for any time not exceeding ten years, the right to sell refreshments, other than spirituous, fermented, or intoxicating liquors, within the park or parks, under such regulations as the board shall prescribe.

(4) The board shall have power to attach penalties for the infraction of their by-laws; and the same shall be enforced by summary proceedings before the Police Magistrate of the city or town, or, in his absence, before any Justice of the Peace having jurisdiction therein or before any Justice of the Peace having jurisdiction in the locality in which the offence is committed, in the manner and to the extent that by-laws passed by municipal councils may be enforced.

(5) The by-laws shall be sufficiently authenticated by being signed by the chairman of the board; and a copy of any by-law, written or printed, and certified to be a true copy by any member of the board, shall be received as evidence in any Court of justice or elsewhere without proof of any such signature, unless it is specially pleaded or alleged that the signature to the original by-law has been forged. 46 V. c. 20, s. 11.

Property may be granted, etc., to municipality for park purposes.

12. Real and personal property may be devised, granted, conveyed, bequeathed, or given to the city or town for the purpose of the improvement or ornamentation of the park or parks of the city or town, or of the approaches thereto, or of the streets connecting therewith; or for the establishment or maintenance on park property of museums, zoological or other gardens, collections of natural history, observatories, monuments, or works of art; upon such trusts and conditions as may be prescribed by the donor. 46 V. c. 20, s. 12.

Power to acquire land.

13.—(1) The board shall have power and authority to select and acquire, by purchase or otherwise, or to lease, the lands, rights, and privileges needful for park purposes.

(2) The lands purchased by the board, together with those assumed by them as and for park purposes at the time of the adoption of this Act, shall not together exceed, in the case of cities having a population of 100,000 inhabitants and over, 2,000 acres, and in other cities 1,000 acres, and in the case of towns 500 acres; but lands in excess of these quantities may be taken by devise or gift. 46 V. c. 20, s. 13 (2); 50 V. c. 31, s. 1.

(3) The title of all lands purchased shall be taken to the city or town.

(4) The board shall have power to let any lands not immediately required for park purposes.

(5) If the board find that they have more land than is required for park purposes, they may sell or otherwise dispose of the said land not required, in such manner, and upon such terms of cash or credit, or part cash and part credit, as they may think most advantageous. 46 V. c. 20, s. 13 (3-5).

Power to enter on lands and appropriate streams, etc.

14. The board, their engineers, surveyors, servants, and workmen from time to time, and at such time sas the board shall see fit, may enter into and upon the lands of any persons, bodies politic or corporate, in the municipality, or, in the case of a city, within ten miles, and, in case of a town, within five miles thereof and may survey, set out, and ascertain such parts thereof as are required for the purposes of the board, including parks, boulevards, avenues, and drives and approaches thereto, and including also the supply of water for artificial lakes, fountains, and other park purposes; and (with the consent of all parties interested capable of consenting) may divert and appropriate any river, ponds of

water, springs or streams of water therein which the engineer, surveyor or other person authorized in this behalf by the board shall judge suitable and proper for the said purposes; and the board may contract with the owner or occupier of the said lands, and with those having a right or interest in the said water, for the purchase or renting thereof, or of any part thereof, or of any privilege which may be required for the purposes of the board. But the board shall not interfere with the water-works of any municipal corporation or of any company. 46 V. c. 20, s. 14.

Arbitration.

15. In case of any disagreement between the board and the owner or occupier of, or any other person interested in, such lands, or any person having an interest in the said water, or in the natural flow thereof, or in any such privilege as aforesaid, respecting the amount of purchase money or yearly rental thereof, or as to the damages which the appropriation thereof by the board will cause, or otherwise, the matter in question shall be decided by arbitration in accordance with the provisions of *The Municipal Act*, and as hereinafter provided. 46 V. c. 20. s. 15.

Rev. Stat. c. 184.

Arbitration provisions in Municipal Act incorporated herewith.

16.—(1) The sections of *The Municipal Act* relating to the appointment of arbitrators and procedure, and numbered 385 to 404, both inclusive, and the sections numbered 483 to 486, both inclusive, relating to compensation for lands taken, are incorporated with, and are to be taken and read as part of this Act, and shall apply to the board as if the board were specially named therein instead of the municipal council. 46 V. c. 20, s. 16.

Rev. Stat. c. 184, s. 403.

(2) Section 403 of *The Municipal Act*, shall apply to an award made under the preceding sub-section, where such award is not binding on the board of park management until adoption. 47 V. c. 32, s. 10 (3).

Board to make yearly estimates.

17.—(1) The board shall in the month of March in every year make up, or cause to be made up, an estimate of the sums required during the ensuing financial year, for:

(a) The interest of any money borrowed as herein mentioned;

(b) The amount of the sinking fund; and

(c) The expense of maintaining, improving, and managing the parks, boulevards, avenues, and streets under their control.

(2) The board shall report their estimate to the council not later than the 1st day of April in each year.

Special rate for park purposes.

(3) The council shall, in addition to all other rates and assessments for municipal purposes, levy and assess in every year a special annual rate sufficient to furnish the amount estimated by the board to be required for the year, but not exceeding one-half mill in the dollar upon the assessed value of all ratable real and personal property; such rate to be called "The Park Fund Rate." The said rate shall be deemed to be included in the limit of two cents on the dollar authorized by *The Municipal Act* in that behalf exclusive of school rates.

Rev. Stat. c. 184.

Power to issue debentures.

(4) The council may also, subject as hereinafter provided, on the requisition of the board, raise by a special issue of debentures of the municipality, to be termed "Park Fund Debentures," the sums required for the purpose of purchasing the lands and privileges reported necessary for park purposes.

(5) It shall not be necessary to submit to the electors a by-law authorizing the issue of debentures in case the annual sum required to meet the annual interest and sinking fund does not, with a reasonable allowance for annual expenses of managing, improving and maintaining the parks, and other works under the control of the board, exceed the limit of half a mill in the dollar, any provisions in the Municipal and Assessment Acts, or any special or private Acts relating to the city or town, to the contrary notwithstanding.

(6) The debentures may run for such periods as the council thinks fit, not to exceed forty years from the date thereof, and shall be in such sums as the council sees fit, and bear interest not to exceed six per centum per annum, payable half-yearly, and shall not be sold below par. They shall be issued, and a record kept of the same, as is provided with respect to other city or town debentures.

(7) Debentures issued by virtue of this Act, shall form a lien and charge upon all lands which are by this Act declared to be subject to the control and management of the board.

(8) In case of a sale, the board may sell free from the said lien, but the purchase money shall be applied to the pay-

ment of park debentures, or to the purchase of other lands for park purposes.

(9) During the currency of the debentures the council shall withhold and retain, as a first charge on the annual rate, the amount required to meet the annual interest of the debentures, and the annual sinking fund to be provided for the retirement thereof as the debentures become due; such sinking fund to be invested and dealt with, as in the case of other municipal debentures.

(10) All moneys realized or payable under this Act shall be received by the treasurer of the municipality in the same manner as other funds, and by him deposited to the credit of the park fund, and shall be paid out by him on the orders of the board; save as to the amount required to meet the interest and provide a sinking fund for debentures. 46 V. c. 20, s. 17.

Prohibitions and penalties.

18. If any person does or commits any of the following acts:

1. Wilfully or maliciously hinders, or interrupts, or causes, or procures to be hindered or interrupted, the said board, or their engineers, surveyors, managers, contractors, servants, agents, workmen, or any of them in the exercise of any of the powers and authorities in this Act authorized and contained;

2. Wilfully or maliciously lets off or discharges any water so that the same runs waste or useless from, or out of any reservoir, pond, or lake connected with any such park;

3. Causes any dog or other animal to swim in the water or throws, or deposits any injurious nuisance, or offensive matter into the water in any reservoir, lake, pond, or other receptacle for water connected with any such park, or upon the ice in case such water is frozen, or in any way fouls the water, or commits any unlawful damage or injury to the works, pipes, or water, or encourages the same to be done;

4. Lays or causes to be laid any pipe or main to communicate with any pipe or main belonging to the water works connected with any such park or parks, or in any way obtains or uses any water thereof, without the consent of the board;

5. Washes or cleanses any cloth, wool, leather, skin or animals, causes any dog or other animal to swim therein, or places any nuisance or offensive thing within the distance of one

mile in case of a town, or within the distance of three miles in the case of a city, from the source of supply for such water works, in any river, pond, creek, spring, source or fountain, from which the water for the supply of any such park or parks is taken, or conveys, casts, throws, or puts any filth, dead carcase, or other noisome or offensive thing therein, or within the distance as above set forth, or causes, permits, or suffers the water of any sink, sewer, or drain to run or be conveyed into the same, or causes any other thing to be done whereby the water therein may be in any way tainted or fouled ;

6. Wilfully or maliciously injures, hurts, defaces, tears, or destroys any ornamental or shade tree or shrub, or other plant, or any statue, fountain, vase, or fixture of ornament or utility, in any street, avenue, drive, park, or other public place, under the control of any such board, or wilfully, negligently or carelessly suffers or permits any horse or other animal driven by or for him, or any animal belonging to him or in his custody, possession or control, and lawfully on the street or other public place, to break down, destroy, or injure any tree standing for use or ornament, in any such public park or place ;

7. Wilfully or maliciously injures, hurts, or otherwise molests or disturbs any animals, birds, or fish, kept in any such park or in the lakes or ponds therewith connected ;

And if such person is convicted of any such act before a Justice of the Peace, having jurisdiction in the locality within which the offence is committed, he shall for every such offence forfeit and pay a sum not exceeding $20, nor less than $1, together with the costs and charges attending the proceedings and conviction ; or such offender may be imprisoned with or without hard labour, in the first instance for any term not exceeding thirty days ; and the person or persons so offending, shall be liable to an action at the suit of the board, to make good any damage done by him, her or them. 46 V. c. 20, s. 18.

Commissioners of police to detail policemen for service in the park.

19. It shall be the duty of the board of commissioners of police of the city and town, upon the request of the board of park management, to detail for service in any of the public grounds under the care of the park board, so many of the police force as the board of police commissioners may deem necessary to maintain order and protect property therein ; and any policeman on duty in the grounds may remove therefrom

any person guilty of a violation of any of the provisions of this Act, or of any of the rules and regulations established by the board. 46 V. c. 20, s. 19.

Protection and powers of officers.

20. The board of park management and the officers thereof shall have the like protection in the exercise of their offices and the execution of their duties, as Justices of the Peace have under the laws of this Province; and the watchmen and other officers of the board, when in the discharge of their duties, shall be *ex officio* possessed of all the powers and authorities of constables. 46 V. c. 20, s. 20.

Limitation of actions.

21. Any action against any person for anything done in pursuance of this Act, shall be brought within six months next after the act committed; or in case there shall be a continuation of damages, then within one year after the original cause of action first arose. 46 V. c. 20, s. 21.

Act to be incorporated with municipal and Assessment Acts.

22. Upon the coming into operation of this Act in any municipality, it shall, as regards such municipality, be deemed to be incorporated with the Municipal and Assessments Acts for the time being affecting such municipality. 46 V. c. 20, s. 22.

Forms.

23. The forms in the schedule hereto may be used for the purposes of this Act, or any forms to the like effect, and the recitals contained in the said forms shall be deemed sufficient, any provisions of *The Municipal Act* to the contrary notwithstanding. 46 V. c. 20, s. 23.

Rev. Stat. c. 184.

SCHEDULE.

FORM A.

PETITION.

To the Municipal Council of

We, the undersigned electors of the said city of (*or as the case may be*) respectfully pray that *The Public Parks Act* may be adopted in this municipality

46 V. c. 20, *Sched.* Form A.

FORM B.

BY-LAW FOR ESTABLISHING A PARK.

A By-law to provide for the adoption of *The Public Parks Act* in the (city *or* town of *as the case may be*)

Whereas electors have petitioned the Council of the said city of (*or as the case may be*) praying for the adoption of *The Public Parks Act*, in the municipality.

Be it therefore enacted by the municipal council of the city of (*or as the case may be*), that the said Public Parks Act be adopted in this (city *or* town).

And be it further enacted that the votes of the electors be taken on this by-law on the day of 18 , commencing at nine o'clock in the morning, and continuing until five o'clock in the afternoon at the undermentioned places. (*Here insert (1) the Ward, (2) the Polling Subdivisions, (3) the Place for holding the poll and the name of the Deputy Returning Officer.*)

That on the day of next, at his office in the at o'clock in the noon, the mayor shall appoint in writing signed by him, two persons to attend to the final summing up of the votes by the Clerk, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of this by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of this by-law.

That the clerk of the said municipal corporation shall attend at the at the hour of o'clock in the noon on the day of 18 , to sum up the number of votes given for or against the by-law.

Notice by the

The above is a true copy of a proposed by-law which will be taken into consideration by the council of after one month from the day of 18 , being the date of the first publication thereof, and the polls for taking the votes of the electors will be held at the hour, day and places named in the said by-law.

46 V. c. 20, *Sched.* Form B.

FORM C.

BY-LAW FOR THE ISSUE OF PARK FUND DEBENTURES.

A by-law authorizing the issue of Debentures for the purpose of a park, (*or* parks, *etc.*, *as the case may be*).

Whereas a by-law of the municipal council of the city of (*or as the case may be*) was passed on the day of 18 , adopting in this municipality, *The Public Parks Act;*

And whereas a sum of $ is required for the purposes of acquiring lands and improving the same (*or as the case may be*) for the said park, (*or as the case may be*) as appears by the special estimate for that purpose furnished by the Board of Park Management to the Council;

And whereas it will require the sum of $ annually for a period of years to pay the interest of the said debt and the sum of $ annually during said period for the forming of a sinking fund of per centum per annum, for the payment of the debt created by this by-law, making in all the sum of $ annually as aforesaid;

And whereas it is necessary that such annual sum of $ shall in each year during the said period be charged on the special rate mentioned in the section of the said Act;

Be it therefore enacted by the municipal council of the said city of (*or as the case may be*) pursuant to the provisions of *The Public Parks Act:*

That the mayor of the said municipality may borrow on the credit of the said Annual Park Fund Rate as aforesaid, and may issue Park Fund Debentures of the Corporation to that amount, in sums not less than $100 each, and payable within years from the date thereof, with interest at the rate of per centum per annum that is to say in (*insert the manner of payment, whether in annual payments or otherwise*) such debentures to be payable at and to have attached to them coupons for the payment of interest.

That during years the sum of shall be raised and retained annually, for the payment of interest on said debentures, and also the sum of for the purpose of forming a sinking fund of per centum per annum, for the payment of the principal of the said loan of in years, making in all the sum of to be raised and charged annually as aforesaid, on the Special Park Fund Rate, unless the said Debentures shall be sooner paid, for the purpose of paying the said sum of with interest thereon as aforesaid.

46 V. c. 20, *Sched.* Form C.

FORM D.

FORM OF DEBENTURE.

Park Fund Debentures $ (*or* £ stg.) $ (*or* £ stg.)

City of (*or as the case may be*) Province of Ontario.

Park Fund Debenture No. Transferable.

Revised Statutes of Ontario, 1887, Chapter 190.

$ (*or* £ stg.)

CANADA:

Under and by virtue of the Public Parks Act, and of a by-law No. of the corporation of the of passed under the powers in said Act contained,

The corporation of the promise to pay to the bearer the sum of which said sum the city of (*or as the case may be*) promise to pay at (*insert where payable*) on the day of 18 , with interest at the rate of per cent., said interest to be payable (half-yearly, *or as the case may be*) to the bearer of the annexed coupons or interest warrants respectively, upon the presentation thereof at the said

Dated at the of this day of 188 .

Mayor.
Treasurer.

46 V. c. 20, Sched., Form D.

R. S. O. cap. 191.

An Act to authorize Cities, Towns and Villages to provide Gas and other means of Lighting and Heating.

SHORT TITLE, s. 1.
CONSTRUCTION OF WORKS, s. 2.
POWERS AS TO LANDS, ss. 3-5.
PUBLIC HEALTH AND SAFETY NOT TO BE ENDANGERED, s. 6.
DUTY TO SUPPLY BUILDINGS, s. 7.
BY-LAWS AS TO MAINTENANCE AND MANAGEMENT, s. 8.
ENFORCING PAYMENT OF RATES, s. 9 (1, 2).
REMOVAL OF FITTINGS, s. 9 (3).
POWER TO CARRY WORKS INTO ADJOINING MUNICIPALITY, s. 10.
RESTRICTIONS AS TO LAYING MAINS, s. 11.
PROVISIONS OF OTHER ACTS INCORPORATED, ss. 12, 13.
RIGHTS PRESERVED, s. 14.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be known as "*The Municipal Light and Heat Act.*" 46 V. c. 21, s. 1.

Corporations of cities, etc., may construct gas works, etc.

2.—(1) The corporation of every city, town, or incorporated village shall have power to manufacture and supply for the use of the corporation and of all persons, gas for heating, cooking, and all other purposes for which gas can be used, and to manufacture and supply electric, (*a*) galvanic, or any other artificial light or heat, either in connection with gas or otherwise; and for these purposes shall have power to construct, purchase, improve, extend, hold, maintain, manage and conduct any works which they may deem requisite; and shall have power to acquire any patent or other rights, for the manufacture or production of any artificial light or heat, and also to supply, sell or lease, all fittings, machines, apparatus, meters, or other things for the purposes aforesaid.

May sell coke, etc.

(2) The corporation may sell and dispose of coke, tar, and every other product, refuse, or residuum obtained in or from their said works, and any surplus coal they may have on hand.

(*a*) As to the power to acquire water rights for the purpose of obtaining power to run or drive machinery for supplying electric light, see 51 V. c. 28, s. 38.

(3) The corporation shall have power to rent or purchase such lands and buildings as they deem necessary or advantageous for the purposes aforesaid. May rent or purchase lands.

(4) No property of the corporation shall be liable to be seized for rent due to the landlord of any lands or buildings upon or in which gas, electricity or other means of lighting or heating, may be supplied by the corporation. 46 V. c. 21, s. 2. Property of corporation exempt from distress.

3. The corporation, or their servants under their authority, may, for the purpose of laying down, taking up, examining, or keeping in repair the pipes or wires used for conducting the gas, electricity, or other means of lighting or heating, break up, dig, and trench in, upon, through, over and under the highways, streets, lanes, roads, squares, and other public passages and places in the municipality, or, with the consent of the owner, in, upon, through, over and under, any private property; or may, upon poles, or otherwise, conduct such wires or rods along and across such streets, lanes, roads, squares, and other public passages and places, or, with the consent of the owner, upon private property. 46 V. c. 21, s. 3. Corporation may break up streets, etc.

4.—(1) Where there are buildings within the municipality the different parts whereof belong to different proprietors, or are in possession of different tenants or lessees, the corporation may carry pipes, wires or rods, to any part of any building so situate, passing over the property of one or more proprietors, or in the possession of one or more tenants, to convey the gas, electricity, or other means of lighting or heating, to the property of another, or in the possession of another. Corporation may carry pipes and wires through parts of buildings to supply other parts.

(2) Such pipes, wires, or rods shall be carried up, and attached to the outside of the building, unless consent is obtained to carry the same in the inside. 46 V. c. 21, s. 4.

5.—(1) The corporation may also break up and uplift all passages common to neighbouring proprietors or tenants, and dig or cut trenches therein, for the purpose of laying down pipes or wires, or taking up or repairing or examining the same, doing as little damage as may be in the execution of the powers hereby conferred, and restoring such passages to their original condition without unnecessary delay. May also break up passages common to different proprietors.

(2) The corporation shall make satisfaction to any owner or tenant for all damages sustained by him in the execution of the said powers conferred by this section. 46 V. c. 21, s. 5.

Public safety not to be endangered.

6. The corporation shall construct and locate their gas and other works, and all apparatus and appurtenances thereunto belonging or appertaining, or therewith connected, and wheresoever situated, so as not to endanger the public health or safety. 46 V. c. 21, s. 6.

Municipal corporation constructing works to supply buildings on line of supply, on request.

7. Where the corporation has constructed any works for supplying the municipality with gas, and where there is a sufficient supply thereof, it shall be the duty of the corporation to supply with gas all buildings within the municipality situate upon land lying along the line of any supply pipe of the corporation, upon the same being requested by the owner, occupant or other person in charge of any such building. 47 V. c. 26, s. 1.

Power to make by-laws for maintenance and management of works.

8. The corporation may, from time to time, make and enforce all necessary by-laws, rules, and regulations for the general maintenance and management of all works constructed or maintained under this Act, and of the officers and others employed in connection with them, and for the collection of the rates or charges for supplying gas or electricity or other means of lighting or heating hereunder, and for the rent of fittings, machines, apparatus, meters, or other things leased to consumers, and for fixing such rates, charges, and rents, and the times and places when and where the same shall be payable; and the corporation may allow for prepayment or punctual payment such discount as they deem expedient. 46 V. c. 21, s. 7.

Power to enforce payment of rates.

9.—(1) The corporation may enforce payment of such rates, charges, or rents by action in any Court of competent jurisdiction, or by distress and sale of the goods and chattels of the person owing such rates, charges, or rents, wherever the same may be found in the municipality in which the gas, electricity, or other means of lighting or heating is supplied.

Distress and sale.

(2) Such distress and sale shall be conducted in the same manner as sales are conducted for arrears of taxes, and the costs chargeable shall be those payable to bailiffs under *The Division Courts Act*.

Rev. Stat. c. 51.

Removal of fittings from premises of consumers.

(3) Where any consumer discontinues the use of the gas or other means of lighting or heating furnished by the cor-

poration, or the corporation lawfully refuses to continue any longer to supply the same, the officers and servants of the corporation may, at all reasonable times, enter the premises in or upon which such consumer was supplied with gas, or other means of lighting or heating, for the purpose of removing therefrom any fittings, machines, apparatus, meters, pipes, or other things being the property of the corporation, in or upon such premises, and may remove the same therefrom, doing no unnecessary damage. 46 V. c. 21, s. 8.

Power to carry works into adjoining municipalities.

10. A corporation possessing, or intending to construct, works under this Act may, under a by-law of an adjoining municipality, whether a city, town, village, or township, exercise the like powers within the adjoining municipality as it may under this Act within its own municipality, upon such terms as may be agreed upon; and the corporation of the adjoining municipality may either require to be paid a sum in gross or annually for such privilege, or may pay a sum in gross or annually therefor. 46 V. c. 21, s. 9.

Restrictions as to laying mains in streets used for the mains of an existing company.

11. In case a gas company or any unincorporated firm or person has laid down main pipes for the supply of gas in or through any of the streets, squares or public places of a municipality, the corporation shall not, without the consent of such company, firm or person first had and obtained, nor otherwise than upon payment to such company of such compensation as may be agreed upon, lay down any main pipe for the supply of gas within six feet of such companies' main pipes, or if it be impracticable to cut drains for such other main pipes at a greater distance, then as nearly six feet as the circumstances of the case will admit. This section is subject to any antecedent agreement between the company and municipal corporation. 46 V. c. 21, s. 12.

Rev. Stat. c. 164, ss. 83-93 incorporated herewith.

12. The sections numbered from 83 to 93, both inclusive, of *The Act respecting Joint Stock Companies for supplying Cities, Towns, and Villages with Gas and Water*, are hereby incorporated with this Act as if the same were repeated herein, with the substitution of "corporation" for "company" wherever "company" occurs in the said sections. 46 V. c. 21, s. 10.

Rev. Stat. c. 192, ss. 38-45 incorporated herewith.

13. The sections numbered from 38 to 45, both inclusive, of *The Municipal Water-works Act*, are also hereby incorporated with this Act as if the same were repeated herein, with the substitution of "gas or other" for "water" where

"water" occurs in the said sections, except in the fourteenth line of section 43 where "gas or other light or heat" shall be substituted for the said word "water." 46 V. c. 21, s. 11.

Rights conferred by special Acts preserved.

14. Nothing in this Act shall be construed to diminish the rights of any company under any special Act, or of any unincorporated owners or owner of existing gas works for the supply of gas to any municipality. 46 V. c. 21, s. 13.

R. S. O. cap. 192.

An Act to provide for the construction of Municipal Waterworks.

SHORT TITLE, s. 1.
CONSTRUCTION OF WORKS, s. 2.
POWERS AS TO LANDS, ss. 3-12.
COMPENSATION FOR DAMAGES, s. 13.
PROPERTY VESTED IN CORPORATION, s. 14.
MAINS AND SERVICE PIPES, ss. 15-17.
INSPECTION OF PREMISES, s. 18.
REGULATION OF USE OF WATER AND OF RATES, s. 19.
BY-LAWS FOR MAINTENANCE AND MANAGEMENT, s. 20.
COLLECTION OF RATES, ss. 21, 22
PROTECTION AND POWERS OF OFFICERS, s. 23.
LIMITATION OF ACTIONS, s. 24.
NON-LIABILITY FOR BREAKAGE OR STOPPAGE, s. 25.
EXEMPTION FROM EXECUTION AND TAXATION, ss. 26, 27.
SUPPLYING WATER OUTSIDE OF MUNICIPALITY s. 28.
SALE OF PROPERTY, s. 29.
RESTRICTION AS TO CONTRACTS, s. 30.
LIABILITY OF PERSONS DAMAGING WORKS, s. 31.
PROHIBITIONS AND PENALTIES, ss. 32-34.
MONEY BORROWED TO BE A CHARGE ON WORKS, s. 35.
APPLICATION OF REVENUE, s. 36.
PURCHASE OF EXISTING WORKS, s. 37.
COMMISSIONERS MAY BE APPOINTED, s. 38.
Number and qualification, s. 39.
Salary, s. 40.
Not to be interested in contracts, s. 41.
Council may assume work, s. 42.
Accounts, s. 43.
Oaths of office and records of proceedings, s. 44.
Rates to be paid over to Municipal Treasurer, s. 45.
CONSTRUCTION OF MINOR WATER WORKS, s. 46.
RENTING HYDRANTS, s. 47.
CONSTRUCTION OF WORKS ON PETITION OF ELECTORS, ss. 48-50.
ACT TO BE READ WITH MUNICIPAL ACTS. s. 51.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Municipal Water-works Act.*" 45 V. c. 25, s. 1.

Corporations of Cities, etc., may construct water works.

2. The corporation of every township, city, town, or incorporated village shall have power to construct, build, purchase, improve, extend, hold, maintain, manage and conduct, water-works, and all buildings, materials, machinery and appurtenances, thereto belonging, in the municipality and in the neighbourhood thereof as hereinafter provided. 45 V. c. 25, s. 2; 50 V. c. 29, s. 48.

Powers.

3. The corporation shall have power to employ engineers, surveyors and such others persons, and to rent, with such conditions, covenants, and stipulations as the corporation shall deem requisite or necessary, or purchase, at the option of the corporation, such lands and buildings, waters and privileges as in their opinion may, during the construction or at any future time, be necessary to enable them to fulfil their duties under this Act. (*a*) 45 V. c. 25, s. 3.

Power to enter on lands and appropriate streams, etc.

4. The corporation, their engineers, surveyors, servants and workmen, from time to time, and at such times as the corporation shall see fit, may enter into and upon the lands of any persons, bodies politic or corporate, in the municipality or within ten miles thereof, and may survey, set out and ascertain such parts thereof as are required for the purposes of the water-works, and may divert and appropriate any river, ponds of water, springs or streams of water therein, as any engineer, surveyor, or other person authorized in this behalf by the corporation shall judge suitable and proper for the said purposes, and may contract with the owner or occupier, of the said lands, and those having a right or interest in the said water, for the purchase or renting thereof, or any part thereof, or of any privilege that may be required for the purpose of the water-works, at the option of the corporation. 45 V. c. 25, s. 4.

Arbitration.

5. In case of any disagreement between the corporation and the owners or occupiers or any other person interested in such lands, or any person having an interest in the said water or the natural flow thereof, or in any such privilege as aforesaid, respecting the amount of purchase or yearly rental or value thereof, or as to the damages such appropriation will cause or otherwise, the same shall be decided by arbitration, in accordance with the provisions of *The Municipal Act*, and as hereinafter provided. 45 V. c. 25, s. 5.

Rev. Stat. c. 184.

(*a*) As to the power to acquire water rights under this Act for the purpose of obtaining power to run or drive machinery for supplying electric light, see 51 V. c. 28, s. 38.

Provision in case of infant owners, etc.

6.—(1) In case the owner or occupier is an infant, an idiot, or an insane person, or is absent from this Province, or in case the lands or water privileges are mortgaged or pledged to any person, the Judge of the County Court of the county in which the municipality constructing the waterworks is situated, on application being made to him for that purpose by the corporation, and upon proof of notice of the application having been served or given as is hereinafter provided, shall nominate and appoint three indifferent persons as arbitrators.

(2) The award of the majority of the arbitrators in writing shall be binding on all parties concerned, as fully as if all had joined therein. 45 V. c. 25, s. 6.

Paymen of award.

7.—(1) Any sum so agreed upon or awarded shall, in case of purchase, be paid within three months from the time agreed upon, or from the date of the award, as the case may be; and in case of renting, the rent agreed upon or awarded shall be paid at the times agreed upon, or fixed in the award, but in either case, if a motion is made to amend or set aside the award, payment may be delayed until the determination of the motion.

(2) In default of such payment, the proprietor may resume possession of his property, and all his rights shall thereupon revive. 45 V. c. 25, s. 7.

Payment into court in certain cases.

8—(1) In case the person to whom damages are awarded is an infant, an idiot, or an insane person, or is absent from the Province, or refuses to accept the amount awarded, the corporation may pay the same with interest to the committee of the person under any of the said disabilities, or may pay the same with interest into the High Court to the credit of such person, and such payment shall be a sufficient payment by the corporation.

(2) Any notice required to be served on any person under any of the said disabilities shall be served on the person in whose care or under whose custody or control the person may be.

(3) If any person so required to be served is absent from the Province, or cannot be found, notice may be given by publishing the same for such time in the *Ontario Gazette* and in one paper published in the county in which the said lands lie, as may be ordered by the High Court or a Judge thereof. 45 V. c. 25, s. 8.

Lands, etc., on payment vested in corporation.

9. The lands, privileges, and water, so ascertained, set out or appropriated by the said corporation, for the purposes thereof as aforesaid, shall, upon payment of the said moneys to the person entitled thereto, or into Court as aforesaid, be vested in the corporation in fee simple, except where the lands, privileges or water are rented, in which case the term and possession shall be as agreed upon by the respective parties or as awarded by the arbitrators, but the corporation shall have power at the end of the term, or during the last year thereof, to again rent or to purchase such lands, privileges or water, at the option of the corporation, at a rental or price to be again ascertained and determined in manner aforesaid. 45 V. c. 25, s. 9.

Construction of necessary works.

10. The corporation may construct, erect and maintain, in and upon the said lands, all reservoirs, water-works, and machinery requisite for the undertaking, and for conveying the water thereto and therefrom, in, upon, and through any lands lying intermediate between the said reservoirs and water-works and the springs, streams, rivers, ponds, or waters from which the same are procured and the municipality, by one or more lines of pipes, as may from time to time be found necessary. 45 V. c. 25, s. 10.

Power to enter on intermediate lands.

11—(1) The corporation, and their servants under their authority, may for the said purposes enter and pass upon and over the said lands, intermediate as aforesaid, and the same may cut and dig up, if necessary, and may lay down the said pipes through the same, and in, upon, through, over, and under the highways, streets, lanes, roads, or other passages within the municipality, or within ten miles thereof, and in, upon, through, over, and under the lands and premises of any person or persons, bodies corporate or politic, within the municipality.

(2) All lands, not being the property of the municipality, and all highways, roads, streets, lanes, or other passages so dug up, or interfered with, shall be restored to their original condition without unnecessary delay.

(3) The corporation may set out, ascertain, purchase in manner aforesaid, use and occupy such parts of the said lands as the said corporation may think necessary and proper for the making and maintaining of the said works, or for the opening of new streets required for the same, and for the purchasing of any lands required for the protection of the

said works, or for preserviug the purity of the water supply, or for taking up, removing, altering, or repairing the same, and for distributing water to the inhabitants of the municipality, or for the uses of the corporation, or of the proprietors or occupiers of the land through or near which the same may pass. 45 V. c 25, s. 11.

Power to lay down pipes, etc.

12. For the purposeof distributing water as afore said the said corporation may sink and lay down pipes, tanks, reservoirs and other conveniences, and may from time to time alter all or any of the said works, as well in the position as in the construction thereof, as they may consider advisable. 45 V. c. 25, s. 12.

Compensation for damage

13. The said corporation shall do as little damage as may be in the execution of the powers by this Act granted to them, and shall make reasonable and adequate satisfaction to the proprietors and others whose property is entered upon, taken or used by the corporation, or injuriously affected by the exercise of its powers, to be ascertained as provided in like cases in *The Municipal Act.* 45 V. c. 25, s. 13.

Rev. Stat. c. 184.

Property vested in corporation.

14. All water-works, pipes, erections, and machinery requisite for the said undertaking shall likewise be vested in and be the property of the corporation of the municipality constructing the said works. 45 V. c. 25, s. 14.

Pipes may be carried across railways.

15. The council of the corporation may pass by-laws for laying down in, through, across, under, or along the railway and lands of any railway company, in respect of which this Legislature has authority in this behalf, any main pipe belonging or necessary to any water-works which the corporation of the municipality is authorized to construct, and for entering upon, breaking up, taking, or using such land in any way necessary or convenient for the said purpose, but subject to the terms and restrictions contained in *The Railway Streets and Drains Act.* 45 V. c. 25, s. 15.

Rev. Stat. c. 199.

Service pipes.

16.—(1) Service pipes which may be required shall be constructed and laid down up to the outer line of the street by the corporation, and the corporation shall be solely responsible for keeping the same in repair.

(2) In cases where a vacant space intervenes between the outer line of the street and the wall of the building or other place into which the water is to be taken, the corporation

may, with the consent of the owner, lay the service pipes across such vacant space and charge the cost thereof to the owner of the premises, or the owner may himself lay the service pipes, provided the same is done to the satisfaction of the corporation or person appointed by them in that behalf.

(3) The expense incidental to the laying and repairing, as hereinafter provided, of the service pipes if laid or repaired by the corporation (except the repairing of the service pipes, from the main pipe to the outer limit of the street as aforesaid, which shall be borne solely by the corporation), or of superintending the laying or repairing of the same if laid or repaired by any other person, shall be payable by the owner on demand to the corporation, or if not so paid, may be collected forthwith in the same manner as water-rates : provided that in no case shall the expense of superintending the laying or repairing of such service, if laid or repaired by any other person as aforesaid, exceed one dollar. 45 V. c. 25, s. 16.

Service pipes to be under control of corporation.

17.—(1) The service pipes from the line of street to the interior face of the outer wall of the building supplied, together with all branches, couplings, stopcocks, and apparatus placed therein by the corporation shall be under their control, and if any damage is done to this portion of the service pipe or its fittings either by neglect or otherwise, the occupant or owner of the lands shall forthwith repair the same to the satisfaction of the corporation ; and, in default of his so doing, whether notified or not, the corporation may enter upon the lands where the service pipes are, and by their officers, servants, or agents repair the same, and charge the same to the owner of the premises, as hereinbefore provided.

(2) The stopcock placed by the corporation inside the wall of the building shall not be used by the water tenant, except in cases of accident, or for the protection of the building or the pipes, and to prevent the flooding of the premises.

(3) Parties supplied with water by the corporation may be required to place only such taps for drawing and shutting off the water as are approved of by the corporation. 45 V. c. 25, s. 17.

Inspection of premises.

18. Any person authorized by the corporation for that purpose, shall have free access, at proper hours of the day,

and upon reasonable notice given and request made, or, in case of the written authority of one of the commissioners given in respect of the special case, without notice, to all parts of every building or other premises in which water is delivered and consumed, for the purpose of inspecting or repairing as aforesaid, or for placing meters upon any service pipe or connection within or without any house or building as they may deem expedient, and for this purpose, or for the purpose of protecting or of regulating the use of such meter, may set or alter the position of the same, or of any pipe, connection, or tap, and may fix the price to be paid for the use of such meter, and the times when, and the manner in which the same shall be payable, and may also charge for and recover the expenses of such alterations; and such price, and the expense of such alterations may be collected in the same manner as water-rates. 45 V. c. 25, s. 18.

Regulation of use of water and of rates.

19.—(1) The corporation shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof, and the times of payments; and they may erect such number of public hydrants, and in such places as they shall see fit, and direct in what manner, and for what purpose the same shall be used, all which they may change at their discretion, and may fix the rate or rent to be paid for the use of the water by hydrants, fireplugs, and public buildings.

(2) The sum payable by the owner or occupant of any house, tenement, lot, or part of a lot for the water supplied to him there, or for the use thereof, and all rates, costs and charges by this Act to be collected in the same manner as water-rates, shall be a lien and charge on the house, tenement, lot, or part of a lot, and may be levied or collected in like manner as municipal rates and taxes are by law recoverable. 45 V. c. 25, s. 19.

Power to make and enforce by-laws for maintenance and management of works.

20.—(1) The corporation may from time to time make and enforce necessary by-laws, rules and regulations for the general maintenance or the management or conduct of the water-works and of the officers and others employed in connection with them, not inconsistent with this Act, and for the collection of the water-rent and water-rate, and for fixing the time and times when, and the places where the same shall be payable.

(2) And also for allowing a discount for prepayment, and in case of default of payment may enforce payment by shutting off the water, or by action in any Court of competent jurisdiction, or by distress and sale of the goods and chattels of the owner or occupant, or of any goods and chattels in his possession, wherever the same may be found in the municipality, or of any goods and chattels found on the premises, the property of or in the possession of any other occupant of the premises; but where the arrears exceed one quarter, no distress shall be made of any goods and chattels which are not the property of the person liable for the water-rate.

(3) The distress and sale may be conducted in the same manner as sales are conducted for arrears of taxes, and the costs chargeable shall be those payable to bailiffs under *The Division Courts Act.* 45 V. c. 25, s. 20. Rev. Stat. c. 51.

Lien for rate not invalidated by attempt to collect same.

21—(1) The attempt to collect the rates by any process hereinbefore mentioned shall not in any way invalidate the lien upon the premises as hereinbefore provided.

(2) In the event of the rate remaining uncollected and unpaid, and continuing a lien upon the said premises as aforesaid, the amount of the rate so in arrears shall be returned by the collectors to the treasurer of the municipality annually, on or before the eighth day of April, in each and every year, or such other time as may be fixed by the corporation by by-law in that behalf, and the same, together with interest at the rate of ten per cent. per annum thereon, shall thereupon be collected by the treasurer by the sale of the lands and premises in the same manner and subject to the same provisions as in case of the sale of non-resident lands for arrears of municipal taxes. 45 V. c. 25, s. 21.

Power to employ collectors and others.

22. The corporation shall have power to employ the ordinary collectors and assessors, and such other persons as in their opinion may be necessary to carry out the objects of this Act, and to specify their duties, and to fix their compensation; and all such persons shall hold their offices at the pleasure of the corporation, or as the corporation shall determine by by-law in that behalf, and shall give such security as the corporation shall from time to time require, and such assessors and collectors shall have as full power in the performance and enforcement of the matters to them

committed as the assessors and collectors of the municipality may by law possess and enjoy in respect of municipal taxes. 45 V. c. 25, s. 22.

Protection and powers of officers.

23. The corporation and their officers shall have the like protection in the exercise of their respective offices and the execution of their duties as Justices of the Peace now have under the laws of this Province; and the watchman and other officers of the corporation, when in the discharge of their duties, shall be *ex officio* possessed of all the powers and authority of constables. 45 V. c. 25, s. 23.

Limitation of actions.

24. If an action be brought against any person or persons for anything done in pursuance of this Act, the same shall be brought within six months next after the act committed, or in case there shall be a continuation of damages, then within one year after the original cause of action first arose. 45 V. c. 25, s. 24.

Non-liability for breakage or stoppage.

25. The corporation of the municipality shall not be liable for damages caused by the breaking of any service pipes or attachment, or for any shutting off of any water to repair mains or to tap the mains, if reasonable notice of the intention to shut off the water is given whenever the same is shut off more than six hours at any one time. 45 V. c. 25, s. 25.

Property exempt from execution

26. All materials procured or partly procured under contract with the corporation, and upon which the corporation shall have made advances in accordance with such contract, shall be exempt from execution. 45 V. c. 25, s. 26.

Property exempt from taxation.

27. The lands, buildings, machinery, reservoirs, pipes, and all other real or personal property connected with, or appertaining, or belonging to the water-works, shall be exempt from municipal taxation. 45 V. c. 25, s. 27.

Power to supply water outside of municipality.

28. The said corporation shall have power and authority to supply, upon special terms, any corporation or persons with water, although not resident within the municipality, and may exercise all other powers necessary to the carrying out of their agreement with such corporation or persons, as well within the suburbs of as within the municipality, and they may also from time to time make and carry out any agreement which they may deem expedient for the supply of water to any railway company or manufactory: provided

Proviso.

that where such water is to be supplied in another municipality which itself possesses water-works, no pipes for this purpose shall be carried in, upon, through, over or under any highway or public street, lane, road or passage within such other municipality without the consent of the council of such municipality; the agreement may be for a term of years or otherwise as may be agreed on. 45 V. c. 25, s. 28.

Power to sell any property when no longer required.

29—(1) The corporation may dispose of any real or personal property acquired by them for water-works purposes when no longer required, and until sold, may rent or lease the same; any property so sold shall be free from any charge or lien on account of any debentures issued by the corporation, but the proceeds of the sale shall be added to and form part of the fund for the redemption and payment of any debentures constituting a charge thereon, or should no such debentures then exist, then the said proceeds shall form part of the general funds of the corporation, and may be applied accordingly.

(2) In case credit is given for any portion of the purchase money of such real property the corporation may take security, by way of mortgage to secure the same, and the corporation shall have all the rights, powers, and remedies expressed in or implied by any mortgage given, as fully as if the mortgage, had been given to a private person and every such mortgage, and the proceeds thereof, shall stand as security for any debentures, constituting a charge on the real property, at the time of sale. 45 V. c. 25, s. 29.

No member of council to be interested in any contract.

30. No member of the council of the municipality shall personally have or hold any contract in connection with said works, or be, directly or indirectly, interested in the same, or any of them, but no person shall be held to be disqualified from being elected or sitting as a member of the council of the corporation by reason of his being a taker or consumer of water supplied by the corporation, or by reason of any dealing or contract with the corporation with reference to the supply of water to such person. 45 V. c. 25, s. 30.

Liability of persons doing damage.

31. All persons and corporations who shall, by themselves, their servants or agents, by act, default, neglect or omission, occasion any loss, damage or injury to the water-works of any municipal corporation, or to any plant, machinery, fitting or appurtenances thereof, shall be liable to the corporation for or in respect of such damage, loss, or injury; and damages

in respect thereof may be recovered by the corporation in any Court of competent jurisdiction. 45 V. c. 25, s. 31.

Power to make by-laws prohibiting wrongful use of water and regulating supply.

32.—(1) The corporation may make such by-laws as to the council shall seem requisite for prohibiting, by fine, not exceeding $20 and costs, or by imprisonment in the first instance for any term not exceeding one month, any person, being a tenant, occupant or inmate of any house, building or other place supplied with water from the water works, from lending, selling, or disposing of the water thereof, from giving it away, or permitting it to be taken or carried away, or from using or applying it to the use or benefit of others, or to any other than his, her, or their own use and benefit, or from increasing the supply of water agreed for with the corporation, or from wrongfully neglecting or improperly wasting the water.

(2) And may also make by-laws for regulating the time, manner, extent and nature of the supply by the works, the tenement or parties to which and to whom the same shall be furnished, the price or prices to be exacted therefor, and each and every other matter or thing related to or connected therewith, which it may be necessary or proper to direct, regulate or determine, in order to secure to the inhabitants of the municipality a continued and abundant supply of pure and wholesome water, and to prevent the practising of frauds upon the corporation with regard to the water so supplied.

(3) The amount of the fine, the duration of the imprisonment, and also the option between fine and imprisonment, shall be in the discretion of the Justice of the Peace before whom any proceedings may be taken for the enforcement of such by-law. 45 V. c. 25, s. 32.

Prohibitions and penalties.

33. If any person does or commits any of the following acts:

1. Wilfully or maliciously hinders or interrupts, or causes or procures to be hindered or interrupted the said corporation, or their managers, contractors, servants, agents, workmen, or any of them in the exercise of any of the powers and authorities in this Act authorized and contained;

2. Wilfully or maliciously lets off or discharges water, so that the same runs waste or useless, out of the works;

3. Not being in the employment of the corporation, and not being a member of the fire brigade and duly authorized in that behalf, wilfully opens or closes any hydrant, or obstructs the free access to any hydrant, stopcock, chamber, pipe, or hydrant-chamber, by placing on it any building-material, rubbish, or other obstruction;

4. Throws or deposits any injurious, noisome, or offensive matter into the water or water-works, or upon the ice, in case such water is frozen, or in any way fouls the water or commits any wilful damage or injury to the works, pipes, or water, or encourages the same to be done;

5. Wilfully alters any meter of the water-works placed upon any service pipe or connected therewith, within or without any house, building or other place, so as to lessen or alter the amount of water registered thereby, unless specially authorized by the corporation for that particular purpose and occasion;

6. Lays or causes to be laid any pipe or main to communicate with any pipe or main of the water-works, or in any way obtains or uses any water thereof without the consent of the corporation;

7. Washes or cleanses cloth, wool, leather, skin or animals, or places any nuisance or offensive thing within the distance of one mile in the case of a village or town, or within the distance of three miles in the case of a city from the source of supply for such water works, in any river, pond, creek, spring, source or fountain from which the water of the water works is obtained, or conveys, casts, throws or puts any filth, dirt, dead carcase, or other noisome or offensive thing therein, or within the distance as above set forth, or causes, permits, or suffers the water of any sink, sewer, or drain to run or to be conveyed into the same, or causes any other thing to be done whereby the water therein may be in any way tainted or fouled,—

and such person is convicted of such act before a Justice of the Peace having jurisdiction in the locality within which the offence is committed, he shall, for every such offence, forfeit and pay a sum not exceeding $20 nor less than $1, together with the costs and charges attending the proceedings and conviction, or such offender may be imprisoned in the first instance for any term not exceeding thirty days. 45 V. c. 25, s. 33.

Application of penalties.

34. The penalties in money under this Act, or any portion of them which may be recovered, shall be paid to the convicting Justice, and by him paid, one-half to the treasurer of the corporation, and the the other half to the prosecutor, unless the prosecutor is the servant or officer of the corporation, in which case the whole of the penalty shall be paid to the corporation. 45 V. c. 25, s. 34.

Money borrowed to be a charge on works.

35. The water-works erected or constructed, and also the lands acquired for the purpose thereof, and every matter and thing therewith connected, shall be specially charged with the repayment of any sum or sums which may be borrowed by the corporation for the purposes thereof, and for any debentures which may be issued therefor and the holders of such debentures shall have a preferential charge on the said lands, water-works, and the property appertaining thereto, for securing the payment of the debentures and the interest thereon. 45 V. c. 25, s. 35.

Application of revenue.

36. After the construction of the works, all the revenues arising from or out of the supplying of water, or from the real or personal property connected with the water-works to be acquired by the corporation under this Act, shall after providing for the expenses attendant upon the maintenance of the water-works, subject, however, to the provisions contained in the next preceding section, form part of the general funds of the corporation, and may be applied accordingly. 45 V. c. 25, s. 36.

Power to purchase existing works.

37. The corporation of any township, city, town, or incorporated village may purchase any water-works constructed within or in the neighbourhood of the municipality, and being the property of any person or company, and under the provisions of this Act, may improve and extend such water-works. 45 V. c. 25, s. 37 ; 50 V. c. 29, s. 48.

Council may exercise powers hereby conferred or may elect commissioners.

38.—(1) The council of the township, city, town, or village may itself, or by its officers exercise and enjoy the powers, rights, authorities, and immunities hereby conferred upon the corporation of such municipality, or such council may, either before the commencement of the works, or at any time while they are in course of construction, or after their completion, by by-law, assented to by the electors of the municipality, provide for the election of commissioners for such purpose.

(2) Upon the election of commissioners, all the powers, rights, authorities, or immunities which, under this Act,

might have been exercised or enjoyed by the council and the officers of the corporation acting for the corporation, shall and may be exercised by the commissioners and the officers appointed by the commissioners, and the council thenceforth during the continuance of the board of commissioners shall have no authority in respect of such works.

(3) But any officer or employee appointed or employed by the council in or about the construction or management of the works, shall be continued until removed by the commissioners unless his engagement shall sooner terminate.

(4) Nothing herein contained shall be construed to divest the council of its authority with reference to the providing of moneys required in respect of such works, and the treasurer of the municipality shall, upon the written certificate of the commissioners, pay out any moneys so provided. 45 V. c. 25, s. 38; 50 V. c. 29, s. 48.

Number and qualification of commissioners.

39.—(1) The commissioners shall consist of a board of not less than three and not more than five, of whom the head of the council shall *ex-officio* be one, and the remainder of whom shall be elected annually at the same time and in the same manner as the head of the council, except where a vacancy from any cause occurs on the board, when a commissioner, who shall hold office during the remainder of the term for which his predecessor was appointed, shall be immediately appointed by the said council.

(2) A majority of the commissioners shall constitute a quorum for the transaction of any business within the authority of the board.

(3) Each of the commissioners so elected or appointed shall, during the whole period of his term of office, have the same property qualification as is required for a member of the council of the corporation.

(4) Every commissioner shall, before taking office, make an oath of qualification before some Justice of the Peace, and shall file such oath with the clerk of the municipality.

(5) The place of a commissioner shall become vacant from the same causes as the seat of a member of the council of the corporation. 45 V. c. 25, s. 39.

Salary of commissioners.

40. The salary, if any, of the commissioners, both during the progress of the works and after their completion, shall

from time to time be fixed by the council, but no member of the council, except the head thereof, shall at the same time, be a member of the board of commissioners. 45 V. c. 25, s. 40.

No commissioner to be interested in any contract.

41. No commissioner appointed as aforesaid shall personally have or hold any contract in connection with the said works, or be directly or indirectly interested in the same, or any of them. 45 V. c. 25, s. 41.

Where work entrusted to commissioners council may assume same.

42. The council of the municipality, in case the construction of the works be entrusted to commissioners, may, by by-law assented to by the electors of the municipality, at any time assume the work, remove the commissioners, apportion their current year's salary, and proceed with and manage the works, and, in such case, all the rights, powers, authorities, immunities, duties and liabilities then belonging to the commissioners, shall be transferred to and vested in the council, but any officer or employee appointed or employed by the commissioners in or about the construction or management of the works, shall be continued until removed by the council, unless his engagement shall sooner terminate. 45 V. c. 25, s. 42.

Accounts to be kept by commissioners.

43.—(1) The commissioners shall keep, or cause to be kept separate books and accounts of the receipts and disbursements for and on account of the water rates, distinct from the books and accounts relating to the other property, funds, or assets, belonging to the water-works; and all such books shall be open to the examination of any person appointed for that purpose by the council.

(2) The commissioners, on or before the fifteenth day of January, in each year, or upon such other day as the council may name, shall cause a return to be made to the council containing a statement of the affairs of the water-works, which shall shew the amount of the rents, issues, and profits, arising from the water-works, and the number of tenants supplied with water, during the previous year; the extent and value of the moveable and immoveable property belonging to the water-works; the amount of debentures then issued and remaining unredeemed, and uncancelled, and the interest paid thereon, or yet due and unpaid, and the state of the sinking fund; the expenses of collection and management, and all other contingencies; the salaries of officers and servants; the costs of repairs, improvements, and altera-

tions; the prices paid for the acquisition of any real estate that may have been acquired for the use of the water-works; and generally, such a statement of the revenue and expenditure of the water-works, as will at all times afford to the ratepayers a full and complete knowledge of the state of affairs of the water-works.

(3) The commissioners shall also, from time to time, furnish such information as may be required by the council.

(4) All the accounts relating to the water-works shall be audited by the auditors of the corporation in regular course, and the commissioners and all their officers shall furnish to the auditors such information and assistance as may be in their power, to enable the auditors to properly audit such accounts. 45 V. c. 25, s. 43.

Oaths of office and records of proceedings.

44. The commissioners, and the clerks employed in their revenue service, shall be sworn before a Justice of the Peace, to the faithful performance of their duties; the commissioners shall keep a book for the purpose of recording the whole of their official proceedings; and such book shall be open for inspection in the same manner as the books mentioned in the next preceding section. 45 V. c. 25, s. 44.

Rates to be paid to municipal treasurer.

45. All water rents and water rates, when collected, less disbursements by the commissioners, shall, quarterly, or so much oftener as the council may direct, be paid over by the commissioners to the municipal treasurer, and shall be by him placed to the credit of the water-works account. 45 V. c. 25, s. 45.

Construction of minor water works.

46.—(1) Where water-works, for the benefit of a portion only of the municipality, are desired by the owners of any real property in any township, city, town, or incorporated village, the council, on the petition of the owners of the real property to be served, may pass by-laws for the construction of such water-works, and for assessing and levying upon such real property a special rate, sufficient to include a sinking fund for the repayment of debentures, which such council is hereby authorized to issue on the security of such rate, to provide funds for the construction of such water-works, and shall pass by-laws for so assessing and levying the same by an annual rate in the dollar on the said real property according to the frontage thereof, or according to the value thereof, exclusive of improvements, as may be desired by the petitioners.

(2) The council may also pass by-laws for the management of such works, and may appoint such officers as are required therefor.

(3) The water shall be supplied to the said owners and their tenants at such rates as the council may consider requisite to cover the cost of keeping up the works and managing the same ; and a separate account shall be kept of all moneys received or expended on account of the works, so that the owners of the real property and their tenants shall be charged with all expenses and shall obtain the benefit of all receipts on account of the works, and such charges shall, from time to time, be increased or decreased, so that such owners and tenants may obtain the benefit of any excess of receipts from this source for the previous year, or may be charged with any deficiency.

(4) In case any person, subsequent to their construction desires to receive the benefit of the works, the council may permit him to do so upon such terms as the council may deem just, and may either direct that such person shall be charged for water at a higher rate, which rate the council shall fix, or may pass such by-laws as may be required to charge the property to be served of such person with its proper share of the cost of such works, and for giving the other proprietors the benefit thereof.

(5) In case a person is dissatisfied with any action of the council under the last preceding sub-section, he may at any time within one month from the passing of the by-law complained of, appeal to the Judge of the County Court of the county in which the municipality is situated, who, upon notice to the parties, or such of them as he may consider necessary to represent the various interests, shall confirm such by-law, or direct the same to be varied, and the council, in the event of the Judge deciding that the by-law should be varied, shall vary the same accordingly. 45 V. c. 25, s. 46 ; 50 V. c. 29, s. 48.

Provision for renting or erecting and renting hydrants.

47—(1) In case there are in any township, city, town, or incorporated village, water-works under the control of any person or company, the municipal council, upon the petition of at least two-thirds of the freeholders and householders resident in any street, square, alley or lane, or part of a street, square, alley or lane, representing in value one-half of the assessed property therein, may pass by-laws for rais-

ing such sums as may be necessary for renting, or erecting and renting, hydrants to be used for the protection of such property, and whatever may be thereon, from fire, and for the use of the owners and their tenants for such other purposes as may be desired, or agreed upon, by means of a special rate on the said real property, according to the assessed value thereof.

(2) If only part of the street, square, alley, or lane, is to be included in the assessment the council may exclude from the assessment, property the owners whereof object to being assessed, if such property is situated at a greater distance from the hydrant nearest thereto, than is the property of every person signing the petition, and the council considers it unfair that such property should be assessed.

(3) If hydrants erected under this section are used for the general purposes of the municipality the corporation shall contribute for such use a fair amount out of the general funds, in relief of the said special rate, or make some other equitable allowance to the persons liable to such rate, in lieu of such contribution. 45 V. c. 25, s. 47 ; 50 V. c. 29, s. 48.

Petition for construction of water works.

48. In case a petition, signed by two hundred qualified electors in incorporated towns, or by one hundred qualified electors in incorporated villages or in rural municipalities, is presented to the council of such town, incorporated village or rural municipality, asking for the construction of water-works under the powers conferred on municipal corporations by this Act :

1. It shall be the duty of such council to submit a by-law for the construction of such water-works, to the vote of the ratepayers of the said town, incorporated village or municipality, and such council shall, forthwith, prepare a by-law directing the submission of the question, in accordance with the prayer of the petitioners, or in such form as may be approved by the vote of two-thirds of the members of such council, and shall submit the same to the electors for approval, or otherwise, within six weeks after the receipt of the petition by the council ;

2. The council before submitting the by-law may require the petitioners to deposit with the treasurer of the municipality an amount sufficient to cover the probable cost of submitting the by-law to the electors, but not exceeding the sum of $150.

3. In the event of the by-law receiving the sanction and consent of a majority of the electors of the municipality, then the money so deposited shall be forthwith refunded to the petitioners ;

4. Should the by-law be rejected by a majority of the electors of the municipality, then the money so deposited shall be forfeited to the municipality, or so much thereof as may be necessary to cover the costs of submitting the by-law ;

5. The power of municipal councils shall not be deemed to be abridged by this Act, except as expressly stated herein ;

6. The proceedings in taking the vote and the persons having a right to vote, shall be the same as nearly as may be as are required by *The Municipal Act*, in case of by-laws creating debts. 50 V. c. 29, s. 51.

Rev. Stat. c. 184.

If by-law approved council to construct works.

49. If the by-law be approved of by the majority of the electors, it shall be the duty of the council to pass the by-law ; and forthwith to proceed with the construction of the works, provided always that the council may for any good cause, if deemed expedient by a vote of two-thirds of its members, hold the works in abeyance until after the next general municipal election. 50 V. c. 29, s. 52.

Provisions of Rev. Stat. c. 184, respecting elections to apply to preceding two sections.

50. All provisions of *The Municipal Act*, in so far as they apply to elections, and to the prevention of corrupt practices at elections shall apply to the preceding two sections, except so far as such Act would be inconsistent therewith. 50 V. c. 29, s. 53.

Act to be incorporated with Municipal Acts.

51. This Act shall be deemed to be incorporated with, and shall be construed as part of the Municipal Acts now, and from time to time in force. (*a*) 45 V. c. 25, s. 48.

(*a*) See note *a* to sec. 1 of the Assessment Act.

R. S. O. cap. 193.

An Act respecting the Assessment of Property.

PRELIMINARY PROVISIONS, ss. 1-5.
PROPERTY LIABLE TO TAXATION, ss. 6-11.
Exemptions, s. 7.
ASSESSORS—
Appointment, ss. 12-13.
Duties of Assessors, s. 14.
Mode of Assessing Real Property, ss. 15-30.
Mode of Assessing Personal Property, ss. 31-41.
Gencral Provisions, ss. 42-51.
Special Provisions, ss. 52-54.
APPEALS—
To Court of Revision, ss. 55-67.
To County Judge, ss. 68-76.
By Non-Residents, s. 77.
CERTIFIED COPY OF ASSESSMENT ROLL TO BE EVIDENCE, s. 66.
EQUALIZATION OF ASSESSMENTS, ss. 78-86.
STATUTE LABOUR, ss. 87-118.
COLLECTION OF RATES—
Appointment of Collectors, ss. 12, 13.
Collectors' Roll, ss. 119-121.
Collectors' Duties, ss. 122-137.
LIST OF LANDS GRANTED, ETC., BY THE CROWN, ss. 138, 139.
ARREARS OF TAXES—
Duties of Treasurers, Clerks and Assessors, ss. 140-159.
Sale of Lands for Taxes, ss. 160-172.
Certificate of Sale and Deed, ss. 173-188.
Deed binding unless questioned within two years, s. 189.
Deed to be valid if sale valid though statute authorizing it be repealed, s. 190.
Right of entry adverse to purchaser in possession not to be conveyed, s. 191.
Right to improvements when sale void, s. 192 (1).
Option of purchaser to retain land on paying its value, s. 192 (2).
Payment into court, ss. 193-196.
Costs when value of land and improvements alone in question, s. 197.
Lien of tax purchaser for purchase money when title invalid, s. 198.
Contracts between tax purchaser and original owner continued, s. 199.
Application of sections 190-200 limited, ss. 200, 201.
Interpretation, s. 202.
DEFICIENCY FROM NON-PAYMENT TO BE MADE UP BY MUNICIPALITY IN CERTAIN CASES, s. 203.
ARREARS IN CITIES AND TOWNS, ss. 204, 205.
ARREARS IN NEW MUNICIPALITIES, ss. 206-209.
NON-RESIDENT LAND FUND, ss. 210-221.
ARREARS TO FORM ONE CHARGE ON LAND, s. 222.
RESPONSIBILITY OF OFFICERS, ss. 223-250.
MISCELLANEOUS, ss. 251-253.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

PRELIMINARY PROVISIONS.

Short title.

1. This Act may be cited as *The Assessment Act.* (*a*) R. S. O. 1877, c. 180, s. 1.

Interpretation clause.

2. Where the words following occur in this Act, or the schedules thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears: (*b*)

"Gazette."

1. "Gazette" shall mean the *Ontario Gazette*;

"Township."

2. "Township" shall include a union of townships, while such union continues;

"County Council."

3. "County Council" shall include provisional county council;

"Town." "Village."

4. "Town" and "Village" shall mean respectively incorporated town and village;

"Ward."

5. "Ward," unless so expressed, shall not apply to a township ward;

"Municipality."

6. "Municipality" shall not include a county; R. S. O. 1877, c. 180, s. 2 (1-6).

"Local Municipality."

7. "Local Municipality" shall mean and include a city, town, incorporated village, or township, as the case may be; 48 V. c. 42, s. 2 (3).

"Property."

8. "Property" shall include both real and personal property as hereinafter defined; R. S. O. 1877, c. 180, s. 2 (9).

"Land." "Real Property" "Real Estate."

9. "Land," "Real Property," and "Real Estate," respectively, shall include all buildings or other things erected upon or affixed to the land, and all machinery, or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and land covered with water, and all mines, minerals, quarries, and fossils in and under the same, except mines

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(*a*) The Municipal Act and the Assessment Act are in *pari materia*, *per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 394, and so ought to be construed together, *Rex* v. *Palmer*, 1 Leach, C. C. 353-355; *Doe d. Tennyson* v. *Yarborough*, 1 Bing. 24, and, as it were, one statute. *Mc William* v. *McAdams*, 1 Macq. H. L. Cas. 120; see also *Per* Lord Campbell, C., in *Waterloo* v. *Dobson*, 27 L. J. Q. B. 55. It has been held that a repealed statute in *pari materia* with an existing one, may be referred to for the purpose of construing the latter. *Ex parte Copeland*, 2 DeG. M. & G. 914.

(*b*) See as to the construction of an interpretation clause, note *b* to sec. 2 of the Municipal Act.

belonging to Her Majesty; (*c*) R. S. O. 1877, c. 180, s. 2 (7); 43 V. c. 27, s. 8 (1).

"Personal Estate." "Personal Property."

10. "Personal Estate" and "Personal Property" shall include all goods, chattels, interest on mortgages, dividends on bank stock, dividends on shares or stocks of other incorporated companies, money, notes, accounts and debts at their

(*c*) The legislature have not been more successful than many persons have been in giving an exact and correct meaning to the words used, for while providing that all buildings, &c., *upon* or *affixed to* the land, all trees, &c., *upon* the land, and all mines *in* and *under* it shall be included in the word *land*, &c., it has omitted the land or *soil* itself from the definition. *Per* Wilson, J., in *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-197. "Real estate" does not always consist of that species of property which is very obviously land in any sense. Keys of the mansion, and title deeds of the freehold, and titles of honour are realty. *Ib.* The suspension bridge between Ontario and the state of New York, across the Niagara Falls at Clifton, is "land." *Ib.* See also, *Tepper* v. *Nichols*, 18 C. B. N. S. 121; *Wodmore* v. *Dear*, L. R. 7 C. P. 212. It has been held that the proprietors of water works whose mains, pipes, and other apparatus were laid down *in* and *under* the surface of land were liable to be rated under 11 Geo. III. cap. 12, as occupiers of land. *Reg.* v. *East London Water Works*, 18 Q. B. 705; *Reg.* v. *West Middlesex Water Co.*, 28 L. J. M. C. 135; *Reg.* v. *Birmingham Water Works Co.*, 1 B. & S. 84; but see *In re Gas Co. and Ottawa*, 7 U. C. L. J. 104; *Chelsea Water Works Co.* v. *Bowley*, 17 Q. B. 358. So the proprietors of land occupied by a canal and towing path, having on and belonging to them, as incident thereto and necessary to the occupation and use thereof, certain posts for fastening vessels, stone bridges, culverts, and a dry-dock. *Reg.* v. *Overseers of Neath*, L. R. 6 Q. B. 707; see further, *Regent's Canal Co.* v. *St. Pancras*, 3 Q. B. D. 73. So the proprietors of a railway carried forward on arches and abutments *let into* and standing *in* land. *Higgins* v. *Harding*, L. R. 8 Q. B. 7. It has been held by the Court of Appeal in *Toronto Street Railway Co.* v. *Fleming*, 37 U. C. Q. B. 116; reversing the decision of the Court of Queen's Bench in 35 U. C. Q. B. 264, that the Toronto Street Railway Company is not assessable for those portions of the streets of the city of Toronto occupied by them for the purposes of their railway as either land or real property, within the meaning of the Assessment Act. By English statute 30 & 31 Vict. c. 113, s. 17, it is declared that the occupier of land covered with water "shall pay to the sewer rate in respect to his property one-fourth part only of the rate in the pound payable in respect of houses and other property." Held, as to a company possessed of a canal, of filter beds supported on brick arches, and sometimes covered with water and at other times not, of land used for keeping sand for the filter beds, and of land having therein iron pipes, mains and service pipes, that the canal and filter beds were land covered with water, and assessable only at one-fourth the amount to be imposed on houses, &c., but that the land used for the purpose of keeping sand, and the land occupied by iron pipes, mains

actual value, income and all other property, except land and real estate, and real property as above defined, and except property herein expressly exempted; (*d*) R. S. O. 1877, c. 180, s. 2 (8); 43 V. c. 27, s. 8 (2).

[*Sub-ss.* 11 *to* 15 *inclusive were repealed by* 51 V. *c.* 29, *s.* 11, *sub-s.* 2.]

"Last revised assessment roll."

16. "Last revised assessment roll" shall mean the last revised assessment roll of a local municipality;

"List of voters." Rev. Stat. c. 8.

17. "List of voters" shall mean the alphabetical list referred to in section 3 of *The Voters' Lists Act.* 48 V. c. 42, s. 2 (7, 8).

Unoccupied land to be denominated "lands of non-residents," unless owner is domiciled in municipality or requires his name to be entered on roll.

3. Unoccupied land shall be denominated "Lands of non-residents," unless the owner thereof has a legal domicile or place of business in the local municipality where the same is situate, or gives notice in writing, setting forth his full name, place of residence and post office address, to the clerk of the municipality, on or before the 20th day of April in each year, that he owns such land, describing it and requires his name to be entered on the assessment roll therefor, (*e*) which

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and service pipes were land that ought to be assessed at the full value. *East London Water Works Co.* v. *Leyton Sewer Authority*, L. R. 6 Q. B. 669; see further, *Reg.* v. *Midland R. W. Co.*, 4 E. & B. 958; *Reg.* v. *Neatch*, 6 Q. B. 707; *Peto* v. *West Hain*, 2 E. & E. 144; *Reg.* v. *Southworth & Marshall*, 6 E. & B. 1008; *Reg.* v. *Midland R. W. Co.*, L. R. 10 Q. B. 389.

(*d*) A steamboat is clearly personal property. *In re Hatt*, 7 U. C. L. J. 103. So the interest of lessees of a road company. *In re Hepburn*, *Ib.* 46. So insurance premiums. *Phœnix Ins. Co.* v. *Kingston*, 7 O. R. 343. No distinction is to be made in respect of the shares of a company whose Act contains no clause declaring that the shares should be personal estate. *Edwards* v. *Hall*, 6 DeG. M. & G. 74; but see *Ware* v. *Cumberlege*, 20 Beav. 503. See further, note *y* to sub-s. 17 to s. 7. Authority "to tax real and personal property" would not, unless expressed to the contrary in the statute, include money, notes, accounts, debts and choses in action. *Johnson* v. *Lexington*, 14 B. Mon. (Ky.) 648-661; *Louisville* v. *Henning*, 1 Bush. (Ky.) 381; *Bridges* v. *Griffin*, 33 Ga. 113; *People* v. *Hibernia Bank*, 21 Am. 704; but see *Jacksonville* v. *McConnel*, 12 Ill. 138; *Johnson* v. *Oregon City*, 2 Oregon, 327. Nor would it, unless so expressed, give power to tax income. *Savannah* v. *Hartridge*, 8 Ga. 23; but see *Linning* v. *Charleston*, 1 McCord, (S. Car.) 345. The intention of this Act is that all property situate within the Province, *not* being land, real estate or real property, and *not* being exempt under the Act, *including* choses in action and income, shall be taxed as personal estate or personal property. See *Dillon* on Municipal Corporations, 3rd ed. sec. 772, note 3.

(*e*) "What the Legislature meant was to make it the duty of the

notice may be in the form or to the effect of schedule A to this Act; (*f*) and the clerk of the municipality shall, on or before the 25th day of April in each year, make up and deliver to the assessor or assessors a list of the persons requiring their names to be entered on the roll, and the lands owned by them. (*g*) It shall not be necessary to renew such notice from year to year, but the notice shall stand until revoked, or until the ownership of the property shall be changed. 45 V. c. 28, s. 2.

Owner may apply to have his name entered on roll whether notice given or not.

4.—(1) When the name of any owner of such unoccupied land shall not have been entered upon the assessment roll in respect thereof by the assessor, such owner or his agent shall be entitled to apply to the Court of Revision to have the same

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assessor to assess all lands in the name of the owner, where such owner resided *within* the municipality, and was known by the assessor to be so resident, or where by diligent enquiry the assessor shall be able to discover that he is so resident. But the being *in fact* resident within the municipality, or having a legal domicile or place of business there, is made an indispensable condition to the proprietor being assessed for the land upon the roll in his own name, unless, indeed, being a resident *out* of the township, village, &c., he shall have signified to the assessor that he owns such land, *and* desires to be assessed therefor." *Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 E. & A. 279, 284. The assessor cannot legally of himself insert the name of a non-resident on the roll. There must, in such case, be the previous notice and requirement from the non-resident himself. "In my opinion it follows that the assessor has not *in himself* authority to insert the defendant's name on the roll as owner of these unoccupied lands." *Per* Draper, C. J., *Ib.* 289. "It is not to be imagined . . . that it was intended by the Legislature to give to the assessors the right, upon their own view of the ownership of lands, to put them down upon their roll as the property of an individual, resident in *another* and perhaps a *distant* part of the Province, and thus throw upon such individuals the costs of an appeal or perhaps of an action, like the present, in which the production of a copy of the roll is declared to be evidence of the debt. *Per* McLean, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 224. Unless the name of a non-resident owner be legally placed on the roll, no action will lie against him for the taxes due in respect of his land. If the land be rated as unoccupied land, without the name of a non-resident owner, the land only is liable for the amount of taxes. It was at one time held that the assessment of occupied as unoccupied land, was a ground for avoiding a tax sale. See *Allan* v. *Fisher*, 13 U. C. C. P. 63; *Snyder* v. *Shibley*, 21 U. C. C. P. 518; *Street* v. *Fogall*, 32 U. C. Q. B. 119; but the contrary is now held. See *The Bank of Toronto* v. *Fanning*, 18 Grant 391; *Silverthorne* v. *Campbell*, 24 Grant. 17.

(*f*) *In the Form, etc.* See note *r* to sec. 330, of the Municipal Act.

(*g*) See note *g* to sec. 248 of the Municipal Act.

so entered, whether the notice in the preceding section mentioned has or has not been given, and the Court may order the name to be entered, notwithstanding such notice has not been given, or has not been given by the time in this Act provided;

(2) Or such owner or his agent shall be entitled, within the time allowed by law for other applications in that behalf, to apply to the Judge to have the name of such owner entered upon the voters' lists, whether such notice has or has not been given; and the Judge may direct that the same be so entered, notwithstanding such notice has not been given, or has not been given by the time in this Act provided. 45 V. c. 28, s. 3.

Real estate of Railway Companies.

5. The real estate of all railway companies shall be considered as lands of residents, although the company has not an office in the municipality; except in cases where a company ceases to exercise its corporate powers, through insolvency or other cause. (*h*) R. S. O. 1877, c. 180, s. 4.

PROPERTY LIABLE TO TAXATION.

All taxes to be levied equally upon the ratable property, when no other provision made.

6. All municipal, local, or direct taxes or rates shall, where no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the municipality or other locality, according to the

(*h*) Where the owner of lands is non-resident, his name cannot, as a general rule, be entered on the roll unless upon notice and a requirement from him to to that effect. See note *e* to sec. 3. A railway company, unless it has ceased to exercise its corporate powers through insolvency or other cause, is by this section made an exception. Railroad property, whether real or personal, in the absence of legislation to the contrary, is liable to taxation in the municipalities were situate. See *Dillon* on Municipal Corporations, 3rd ed. sec. 790, note. The Toronto Street Railway Company, is not assessable for that portion of the streets occupied by them for the purpose of their railway, either as real or personal estate. *Toronto Street R. W. Co.* v. *Fleming*, 37 U. C. Q. B. 116. In some cases it has been held that the rolling stock of railway companies are fixtures, so as not to pass under a mortgage of the realty. See *Strickland* v. *Parker*, 54 Maine, 263; *Titus* v. *Mabee*, 25 Ill. 257; *Farmers' Loan and Trust Co.* v. *Hendrickson*, 25 Barb. (N.Y) 484; *Farmers' Loan and Trust Co.* v. *Commercial Bank*, 11 Wis. 207; *Phillips* v. *Winslow*, 18 B. Mon. (Ky.) 431; but in the absence of legislation to the contrary, rolling stock should be held to be personal property. *Randall* v. *Elwell*, 11 Am. Rep. 747; *Stevens* v. *Buffalo and New York City R. W. Co.*, 31 Barb. (N.Y.) 590; *Beardsley* v. *Ontario Bank*, *Ib.* 619. As to the statements to be furnished by railway companies to clerks of municipalities. See sec. 29.

assessed value of such property, (*i*) and not upon any one or more kinds of property in particular, or in different proportions. R. S. O. 1877, c. 180, s. 5.

(*i*) The intention is that whenever a council determine to raise a certain sum for a certain purpose within the scope of their authority, the same shall be raised by assessment, to be laid equally upon the *whole ratable property*, according to the assessed value of such property, and not upon any one or more kinds of property. *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91. Where a municipal council, instead of following the plain direction of the statute, by by-law imposed a tax on *wild lands* alone, the by-law was held to be illegal. A tax to pay a city debt levied exclusively upon the *real* property within the city was held to violate a constitutional provision requiring that "the rule of taxation shall be uniform." *Dillon* on Municipal Corporations, 3rd ed. sec. 783. See remarks of Robinson, C. J., in *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91. So taxation exclusively of the land of non-residents, or taxation of the same at a higher rate or in a different manner from the land of residents. *City Council* v. *State*, 2 Speers. (S. Car.) 719; *Nashville* v. *Althrop*, 5 Coldw. (Ten.) 554; see further, *Bennett* v. *Birmingham*, 31 Pa. St. 15. It is illegal to attempt to compel the owners of farms lying within one mile on each side of a public highway to pay for grading, macadamizing, and improving it by an assessment upon their lands to the acre. *Washington Avenue*, 8 Am. 255. The declaration is not simply that *all municipal taxes* shall be levied equally upon the whole ratable property, but that all municipal *local* or direct taxes or *rates* shall be so. In the United States an attempt has been made to draw a distinction between "a tax" and "an assessment." *Railroad Co.* v. *Spearman*, 12 Iowa 112; *Chicago* v. *Larned*, 34 Ill. 203; *Ottawa* v. *Spenser*, 40 Ill. 211; *Baltimore* v. *Cemetery Co.*, 7 Md. 517. It is, however, there almost uniformly held that a provision requiring uniformity of taxation does not, in the absence of express language, apply to rates for local improvements. See *Dillon* on Municipal Corporations, 3rd ed. sec. 778; see, also note *n* to sub-s. 3 of sec. 7. The power of taxation is in general restricted to property *within* the municipality. *Trigg* v. *Glasgow*, 2 Bush. (Ky.) 594; *St. Louis* v. *Ferry Co.*, 11 Wall. (U.S.) 423. In the last mentioned case Mr. Justice Swayne said, "The purpose of the Legislature in conferring authority of this nature was not to tax property through the proprietor, but to tax the things themselves by reason of their being 'within the city,'" *Ib.* 431. There is no difficulty as regards land because of its fixed *situs*. See sec. 15. But as regards personal estate, in its nature movable and liable to be moved from place to place, there is much difficulty. If personal property at the time of the assessment be actually within the municipality, it may be assessed irrespective of the residence or domicile of the owner. See *Dillon* on Municipal Corporations, 3rd ed. sec. 786. The share of a part owner of a steamboat, in the absence of express legislation, held not to be taxable where the owner was resident. *New Albany* v. *Meekin*, 3 Ind. 481. Nor a steamboat belonging to a resident of the city, but registered elsewhere, and only touching at the city during her trips up and down the river. *Wilkey* v. *Pekin*, 19 Ill. 160. But the contrary was held in Alabama. *Battle* v. *Mobile*, 9 Ala.

Taxable property and exemptions.

7. All property in this Province shall be liable to taxation, (*j*) subject to the following exemptions, (*k*) that is to say :

234; see further, *Oakland* v. *Whipple*, 39 Cal. 112; *Haynes* v. *Pacific Steamship Co.*, 17 How. (U. S.) 598; *St. Joseph* v. *Railroad Co.* 39 Mo. 476; *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224. There is no right to tax steamboats coming occasionally within the municipality, where such steamboats are owned by foreigners or non-residents. *St. Louis* v. *Ferry Co.* 11 Wall. (U.S.) 423; but see *St. Louis* v. *Wiggins Ferry Co.* 40 Mo. 580. See further, sections 26 to 30, and notes thereto.

(*j*) The property liable to taxation is property *in the Province*. Personal property, such as bank stock held out of the Province has therefore been held not liable to taxation. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; 37 U. C. Q. B. 51. Stock in a Bank, which had its head office at Montreal, was decided to be property *out* of the Province, and so far not liable to taxation. *Ib.*

(*k*) The burden of taxation, when there is no express provision to the contrary, should fall equally upon the whole ratable property of the municipality. See sec. 6. "As the burden of taxation ought to fall equally upon all, statutes exempting persons or property are construed with strictness; and the exemption should be denied, unless so clearly granted as to be free from fair doubt." See *Dillon* on Municipal Corporations, 3rd ed. secs. 776-778. See also, *Speak* v. *Powell*, L. R. 9 Ex. 25; *Reg.* v. *Mayor of Oldham*, L. R. 3 Q. B. 474; *Telargoch Lead Mining Co.* v. *Guardians of St. Asaph's Union*, *Ib.* 478; *Reg.* v. *St. George's Union*, L. R. 7 Q. B. 90; *Cité de Montreal and Seminaire de St. Sulpice*, M. L. R. 4 Q. B. 1; *Les Sœurs, &c., and the Village of Waterloo*, *Ib.* 20. An illegal exemption does not necessarily avoid the by-law by destroying the equality of the charge. Nor is the illegal exemption of another from taxation any ground for an injunction against the corporation, unless plaintiff is thereby so injured as to be compelled to pay substantially more than his proportion of the tax. *Paye* v. *St Louis*, 20 Mo. 136. An omission on the part of an assessor to assess certain property liable to taxation, whether arising from a misapprehension of law or mistake of fact, will not avoid the general assessment. *People* v. *McCreery*, 34 Cal. 43; see also, *Williams* v. *School District*, 21 Pick. (Mass.) 75; *Bond* v. *Kenosha*, 17 Wis. 284; *Hale* v. *Kenosha*, 29 Wis. 599. It was at one time held that the assessment of property exempt by law from assessment is so far a nullity as to render an appeal to the Court of Revision unnecessary, and the decision by that Court or the County Judge to the contrary of no binding effect. *Great Western Railway* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western R. W. Co*, 17 U. C. Q. B. 262; *Shaw* v. *Shaw*, 21 U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456. Later authorities have doubted that position. *Toronto* v. *Great Western R. W. Co.*, 25 U. C. Q. B. 570; *Scragg* v. *City of London*, 26 U. C. Q. B. 263, 271; 28 U. C. Q. B. 457; *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194, 200. But the most recent authority, has sustained the position. *Nickle* v. *Douglas*, 37 U. C. Q. B. 51. See further, note *n* to sub-s. 3 of this section, and sec. 64 and notes thereto.

Exemptions.

All property belonging to Her Majesty.

Indian lands unoccupied, or occupied officially.

1. All property vested in or held by Her Majesty, or vested in any public body or body corporate, officer or person in trust for Her Majesty, or for the public uses of the Province; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust for or for the use of any tribe or body of Indians, and either unoccupied, or occupied by some person in an official capacity. (*l*)

(*l*) Property, whether freehold or leasehold, in the use or occupation of the Crown, or of any person or persons in his or their official capacity as servants of the Crown, is not assessable. *Shaw* v. *Shaw*, 12 U. C. C. P. 456; *Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551. So property held by the Crown and not granted, located or leased, so far as the interest of the Crown is concerned. *Street* v. *Kent*, 11 U. C. C. P. 255; see also *Street* v. *Simcoe*, 12 U. C. C. P. 284; 2 E. & A. 211; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73. But the statute does not say that land which has once been legally charged with an assessment shall become discharged of it when and because it comes into possession of the Crown. *Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551. Where the Dominion Government leased certain property for the use of Her Majesty, with the condition that the government should pay all taxes and assessments which might be levied and become due on the said premises during the term of the lease, it was held in an action against the owners of the property for municipal taxes accruing during the time the property was so leased, that the property was exempt from taxation under Con. Stat. L. C. c. 4, s. 2, (similar to this provision). *Attorney-General of Canada* v. *City of Montreal*, 13 S. C. R. 352. Before the decision of the *Mersey Docks* v. *Cameron*, and *Jones* v. *Mersey Docks*, 11 H. L. C. 443, an idea had got abroad that if the occupation were for public purposes or charitable purposes which prevented the occupation being beneficial, the occupation was that of the Crown and not ratable. See *Sheppard* v. Bradford, 16 C. B. N. S. 369 for an example. But in *Jones* v. *Mersey Docks*, which so far as it went settled the law, it was decided that the fact of the occupation being for public purposes did not exempt the occupier from the payment of poor rates; but that the occupier was ratable provided he derived revenue from the land, unless the occupation was one on behalf of the Crown—or what may be called an extension of the privilege of the Crown—an occupation for the purposes of the government of the country. *Per* Blackburn, J., in *Reg.* v. *West Derby*, L. R. 10 Q. B. 288. See further *Lord Colchester* v. *Kewney*, L. R. 1 Ex. 368; *Lord Bute* v. *Grindall*, 1 T. R. 338; *Greig* v. *University of Edinburgh*, L. R. 1 H. L. Sc. 348; *Attorney-General* v. *Dakin*, L. R. 3 Ex. 288; *Reg.* v. *McCann*, L. R. 3 Q. B. 677; *Mayor of Essenden* v. *Blackwood*, 2 App. Cas. 574; *Mayor of London* v. *Stratton*, L. R. 7 H. L. 477. The Ontario Legislature has power to tax against a vendee unpatented lands which the Indians have surrendered for the purpose of being sold; all unpatented lands, whether Indian lands or Crown lands, when once agreed to be sold, being upon the same footing as respects liability to muni-

But if occupied not officially.

2. Where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable. (*m*)

Places of worship, etc.

3. Every place of worship, and land used in connection therewith, church yard or burying ground. (*n*) R. S. O. 1877, c. 180, s. 6 (1-3). *See also Rev. Stat.*, c. 175, s. 13.

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cipal taxation. See *Church* v. *Fenton*, 28 U. C. C. P. 384; 4 A. R. 159; 5 S. C. R. 239.

(*m*) The exemption mentioned in the preceding sub-section as to property vested in or held by Her Majesty, &c. is here qualified by an enactment that the *occupant* shall be liable to assessment, provided he do not occupy in an official capacity, but the *property*, itself is not to be liable. See *Street* v. *Kent*, 11 U. C. C. P. 260. A race course held under demise from the Crown, is, as regards the interest of the lessee, taxable. *Mayor of Essenden* v. *Blackwood*, 2 App. Cas. 574. A person having the mere possession of a lot of land vested in the Crown, determinable at any moment, has not such an estate as will qualify him for office under the Municipal Act, but is nevertheless rightly assessed under this Act. *Reg. ex rel. Lachford* v. *Frizzell*, 9 U. C. L. J. N. S. 27.

(*n*) The question whether or not a place of public worship is exempt from taxation for local improvements was raised in *Haynes* v. *Copeland*, 18 U. C. C. P. 150, and apparently the court decided in favour of the exemption. Wilson, J., said, "The eighth section of the Assessment Act is the one which provides how, in the absence of any express provision to the contrary, 'all municipal *local* or direct taxes or rates are to be levied.' Then section nine provides that 'all land and personal property shall be liable to taxation, subject to the following exemptions.' . . . So that local assessments were distinctly before the legislature when these exemptions were framed, and among such exemptions are 'every place of worship, churchyard or burying-ground,' &c. There is no reason to suppose that the legislature made any distinction in these exemptions between assessments for general and local purposes. *Ib.* 161, 162. See also *City of Montreal* v. *Cathedral*, M. L. R. 4 S. C. 13. In England it has been held that "a church" is neither a "house" nor "land for the purpose of assessment under the Metropolis Management Acts, 18 & 19 Vict. c. 120, secs. 105-250; 25 & 26 Vict. c. 102, sec. 77. *Angell* v. *Vestry of Paddington*, L. R. 3 Q. B. 714. Owners of a cemetery have in England been held liable to be assessed for a poor rate. *Reg.* v. *St. Mary Abbot's*, 12 A. & E. 824; *Reg.* v. *Abney Park Cemetery Co.*, L. R. 8 Q. B. 515. "Burying-ground" is by this sub-section exempt from taxation. But whether the exemption extends to all "burying grounds," or only those used in connection with a place of worship, is a question not yet determined. See further, *Broadway Baptist Church* v. *McAtee*, 8 Am. 480; *First Presbyterian Church* v. *Fort Wayne*, 10 Am. 35; *State* v. *Mayor, &c., of Newark*, *Ib.* 223; *Boston Seamen's Friend Society* v. *Mayor, &c., of Boston*, 17 Am. 153.

Public educational institutions.

4. The buildings and grounds of and attached to every university, college, high school, or other incorporated seminary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise occupied. (*o*)

Town and City halls, etc.

5. Every public school house, town or city or township hall, court house, gaol, house of correction, lock-up house, and public hospital, with the land attached thereto, and the personal property belonging to each of them. (*p*)

(*o*) This is not an absolute, but a qualified exemption, viz: "so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but *not* if otherwise occupied." A building erected for and used as elementary schools for the education of the poor, and two dwellings erected for the teachers of the schools, all vested in a trustee, were held not to be exempt under Eng. Stat. 11 & 12 Vic. c. 63, secs. 2, 69, from the payment of a rate for the paving of the street on which they abutted. *Bowditch* v. *Wakefield Local Board of Health*, L. R. 6 Q. B. 567. See also *Village de Verdun et Les Sœurs de la Congregation de Notre Dame* 1 Dorion 163.

(*p*) In using the terms employed in exempting certain buildings, such as court-houses, gaols, places of worship and the like, and then exempting the real property of some institutions, and the real *and* personal property of other institutions, the legislature must have had in view the nature, object and purposes of these buildings and institutions. Thus:

1. Every place of worship, *and* land in connection therewith church-yard or burying ground. Sub. 3.
2. Every public school-house, town or city or township hall; court-house, gaol, house of correction, lock-up house and public hospital, *with* the land attached thereto, *and* the personal property belonging to each of them. Sub. 5.
3. The provincial penitentiary, the central prison, and the provincial reformatory *and* the land attached thereto. Sub. 8.
4. Every industrial farm, poor-house, alms-house, orphan asylum, house of industry and lunatic asylum, and every house belonging to a company for the reformation of offenders, *and* the real *and* personal property belonging to or connected with the same. Sub. 9.

The legislature, it will be observed, does not exempt all hospitals, but only *public* hospitals. Lord Coke says, in *Sutton's Case*, 10 Rep. 31 a, that there is no legal hospital except where the poor persons benefited are themselves incorporated; and he says that where the corporate succession is vested in trustees to effectuate the purposes of the institution, there is no legal hospital. It seems, clear that a legal hospital in *that* sense is not meant where the words "public hospital" are used in this section. It is more reasonable to hold that the words are used in their popular sense, and that any institution

Public roads, etc.

6. Every public road and way or public square. (*q*)

Municipal property.

7 The property belonging to any county or local municipality, whether occupied for the purposes thereof or unoccupied; but not when occupied by any person as tenant or lessee, or otherwise than as a servant or officer of the corporation for the purposes thereof. (*r*)

Provincial penitentiary.

8 The Provincial Penitentiary, the Central Prison and the Provincial Reformatory, and the land attached thereto.

Poor houses, etc.

9 Every industrial farm, poor house, alms house, orphan asylum, house of industry, and lunatic asylum, and every house belonging to a company for the reformation of offenders, and the real and personal property belonging to or connected with the same. R. S. O. 1877, c. 180, s. 6 (4-9).

Scientific institutions, etc.

10 The property of every public library, mechanics institute, and other public, literary or scientific institution, and of every agricultural or horticultural society, if actually occupied

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which, though not in a strictly legal, might in a popular sense be called a public hospital, may claim exemption. See *Lord Colchester* v. *Kewney*, L. R. 1 Ex. 368; *In re Appeal of Sisters of Charity of Ottawa*, 7 U. C. L. J. 157. See also *Wylie* v. *City of Montreal*, 12 S. C. R. 384; *Needham* v. *Bowers*, 21 Q. B. D. 436.

(*q*) Public squares are as much public property as public roads and ways, and cannot, without a breach of trust, be applied to any use inconsistent with the purpose of their dedication. See *Guelph* v. *Canada Co.*, 4 Grant 632; *Attorney-General* v. *Goderich*, 5 Grant 402; *Attorney-General* v. *Brantford*, 6 Grant 592; *Attorney-General* v. *Toronto*, 10 Grant 436; *Wyoming* v. *Bell*, 24 Grant 564; *Re Peck and the Town of Galt*, 47 U. C. Q. B. 211. They are exempt from taxation. See *In re Hamilton and the Township of Biddulph*, 13 L. J. N. S. 18.

(*r*) There could be no object in the council levying taxes on its own property. Hence, whether occupied for the purposes thereof or unoccupied, such property is exempt. The property of the municipality is not in any proper sense taxable under general tax laws. *People* v. *Salomon*, 51 Ill. 37; *Directors of the Poor* v. *School Directors*, 42 Pa. St. 21; *Inhabitants of Worchester County* v. *Mayor, &c., of Worchester*, 17 Am. 159. But this exemption is not held to extend to property of the municipality, not for the purpose of carrying on municipal government, but for the profit or convenience of its citizens individually or collectively. *Louisville* v. *Commonwealth*, 1 Duv. (Ky.) 295. It is not declared by our statute that the occupant of the municipality, when occupying for the purposes of gain, shall be exempt from taxation; but the contrary appears. See notes *l* and *m* to sub-secs. 1 and 2 of this section. The words of the exemption are apparently wide enough to include property belonging to one municipality and situated in another.

by such society, and all the lands and buildings of every company formed under the provisions of *The Act respecting Joint Stock Companies for the erection of Exhibition Buildings*, where the council of the corporation in which such lands and buildings are situated consents to such exemption. (*s*) R. S. O. 1877, c. 180, s. 6 (10); 51 V. c. 29, s. 2.

Personal property of Governors.

11. The personal property and official income of the Governor-General of the Dominion of Canada, and the official income of the Lieutenant-Governor of this Province. R. S. O. 1877, c. 180, s. 6 (11).

Land occupied by military or naval officers and their pay, salaries, pensions, etc.

Property of officers on full pay.

12. The houses and premises of any officers, non-commissioned officers, and privates of Her Majesty's regular Army or Navy in actual service, while occupied by them, and not exceeding $2000 in value, and the full or half pay of any one in either of such services; and any pension, salary, gratuity, or stipend derived by any person from Her Majesty's Imperial Treasury, and the personal property of any person in such naval or military services, on full pay, or otherwise in actual service. (*t*) 49 V. c. 38, s. 1.

Pensions under $200.

13. All pensions of $200 a year and under payable out of the public moneys of the Dominion of Canada, or of this Province (*u*).

(*s*) The property of every public library, mechanics' institute, and other public literary or scientific institution, appears to be absolutely exempt; but the property of an agricultural or horticultural society or of a company formed under Rev. Stat. c. 162 appears to be only conditionally exempt. A society in the town of Bradford, consisting of six hundred members, each having a share in the institution, and each making annual contributions to its funds, the primary object of the society being the formation of a library for books of all descriptions, allowed to be used only by members, was held exempt from taxation under Eng. Stat. 6 & 7 Vic. c. 36. *Reg.* v. *Bradford Library and Literary Society*, 7 W. R. 36.

(*t*) The plaintiff, a major in the regular army, went on half pay, and, with the consent of the Horse Guards, accepted the position of Deputy Adjutant-General of Militia, under the Dominion Government, by whom his duties were prescribed and with a salary and allowances, including rent, payable by them. Held, that during such appointment he was not an officer of Her Majesty's regular army in actual service so as to exempt from taxation the house which he occupied. *Jarvis* v. *Kingston*, 26 U. C. C. P. 526.

(*u*) While *all* pensions derived by any person from her Majesty's Imperial treasury are by the preceding subsection exempt, *none* but pensions of $200 a year or under, payable out of the public money of the Dominion or Province, are here made exempt. See *Reg.* v. *Mayor of Liverpool*, 8 A. & E. 176, as to the construction of such a

Grain, etc., *in transitu.*

14. All grain, cereals, flour, live or dead stock, the produce of the farm or field, in store or warehouse, and at any time owned or held by or in the possession of any person in any municipality, such person not being the producer thereof, and being so held, owned or possessed solely for the *bona fide* purpose of being conveyed by water or railway for shipment or sale at some other place. (*v*) R. S. O. 1877, c. 180, s. 6 (13, 14).

Farm horses, etc

14*a*. All horses, cattle, sheep, and swine, which are owned and held by any owner or tenant of any farm, and when such owner or tenant is carrying on the general business of farming or grazing. 51 V. c. 29, s. 3.

Incomes of farmers, etc.

15. The income of a farmer derived from his farm, and the income of merchants, mechanics, or other persons derived from capital liable to assessment. (*w*)

Personal property secured by mortgage, or Provincial or Municipal debentures.

16. So much of the personal property of any person as is invested in mortgage upon land or is due to him on account of the sale of land, the fee or freehold of which is vested in him, or is invested in the debentures of the Dominion of Canada or of this Province, or of any municipal corporation thereof, and such debentures. (*x*)

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provision. A Provincial Legislature cannot impose a tax on the official income of an officer of the Dominion Government. *Leprohon* v. *Ottawa*, 2 A. R. 522. See also *Coates* v. *Town of Moncton*, 25 New Brunswick Rep. 605.

(*v*) The exemption would appear to cover produce held in a municipality for the purpose of transit, when the holder is not the producer thereof.

(*w*) The Act of 1868-9 only exempted "the income of a farmer derived from his farm." This, probably was on the ground that the farm was taxed, and so it would be unfair to tax both the farm and the income derived from it. But until 24th December, 1869, there was nothing to exempt the income of merchants or others derived from capital, although the capital was taxed. Then the 33 Viet. c. 27, s. 2 was passed, declaring "that subsection 14, of section 9 of the said Act be amended by adding the following words thereto; 'and the income of merchants, mechanics or other persons *derived from capital liable to assessment.*'" In the United States it was held that power "to tax all real and personal estate within the corporate limits of the city," did not confer authority to tax income. *Savannah* v. *Hartridge*, 8 Ga. 23: but see *Linning* v. *Charleston*, 1 McCord S. Car. 345. Or to tax capital employed in merchandise distinct from the articles of property in which the capital was invested. *Municipality* v. *Johnston*, 6 La. An. 20.

(*x*) The reason of the exemption as to mortgages is, that the land

17. The shares held by any person in the capital stock of any incorporated or chartered bank, doing business in this Province; but any interest, dividends or income derived from any such shares held by any person resident in this Province shall be deemed to come within and to be liable to assessment under section 31 of this Act. (*y*) R. S. O. 1877, c. 180, s. 6 (15-17). Dividends only of Bank Stock to be assessed.

18. The stock held by any person in any incorporated company, whose personal estate is liable to assessment in this Province. 49 V. c. 38, s. 2. Stock in companies.

19. The stock held by any person in any railroad company, the shares in building societies, and so much of the personal property of any person as is invested in any company incorporated for the purpose of lending money on the security of real estate; but the interest and dividends derived from shares in such building societies, or from investments in such companies as aforesaid, shall be liable to be assessed. (*z*) Railroad and building society stock.

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itself, on which the mortgage security rests, is subject to taxes; and the object of the exemption of Government and Municipal debentures is to induce persons to invest in those debentures, and so keep up as much as possible the price thereof. But *interest* on mortgages, when forming a portion of a person's income, is apparently not exempt. See sub. s. 26 of this section.

(*y*) In the United States most of the bank charters are granted by the Legislatures of the several States. These Acts of incorporation are there looked upon as contracts between the individual stockholders and the State. *O'Donnell* v. *Bailey*, 24 Miss. 386. If the State Legislature provide in the Act of incorporation that there shall be none but State taxes imposed on the bank, a municipal tax would be void. *State Bank of Indiana* v. *Madison*, 3 Ind. 43. But where there is no such provision in the charter of incorporation, a power to impose municipal taxes, when conferred by Act of the State Legislature, may be exercised. *Providence Bank* v. *Billings*, 4 Peters (U. S.) 561: *Gordon* v. *Appeal Tax Court*, 3 How. (U. S.) 133; *Gordon* v. *Baltimore*, 5 Gill. (Md.) 231. If the only power conferred were to tax "property within the limits of the city," that would not confer authority to tax bank stock. *Savannah* v. *Hartridge*, 8 Geo. 23. It was held under the Act of 1873, as amended, that the stock held by a citizen of Kingston in the Merchants' Bank of Canada, of which the head office is in Montreal, is not taxable in the Province of Ontario. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; 37 U. C. Q. B. 51.

(*z*) It is presumed that as the interest and dividends of building societies, and real estate loan companies are liable to assessment in the municipality where they are situate, see secs. 34 (1), 35 (2), that when this assessment has been paid by the companies the stockholders will exempt from any further assessment on account of such dividends should they reside in another municipality. Though the

Personal property owned out of the Province.

20. All personal property which is owned out of this Province, except as hereinafter provided. (*a*)

Personal property equal to debts due.

21. So much of the personal property of any person as is equal to the just debts owed by him on account of such property, except such debts as are secured by mortgage upon his real estate, (*b*) or are unpaid on account of the purchase money therefor.

Personalty under $100.

22. The net personal property of any person: provided the same is under $100 in value. (*c*) R. S. O. 1877, c. 180, s. 6 (18-21).

Personal earnings not exceeding $700.

23. The annual income of any person derived from his personal earnings; (*d*) provided the same does not exceed $700. (*e*) 50 V. c. 32, s. 1.

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stock held in railway companies is declared exempt by this subsection by section 34 (2), the shareholders are liable to assessment upon the income derived from railway companies.

(*a*) See note *a* to first paragraph this section.

(*b*) If what a man owes on account of his personal estate be equal to or exceed the amount of his personal estate, his personal estate is exempt from taxation. This is because it is unfair to tax a man upon that which he does not really own, and cannot be said really to own so long as he owes the price of it. The exception is where the debts are secured by mortgage on his real estate, or are unpaid on account of the purchase money therefor.

(*c*) So much of the personal property of any person as is equal to the just debts owed on account of such property is to be deducted from the value of his personal property. Sub-s. 21 to this section. The balance is his "*net* personal property." If the latter be under $100 in value, it is exempt from taxation. As to *net* personal property when applied to income. See sec. 31.

(*d*) "Income," when applied to the income of a commercial business for a year in its natural sense is the balance of gain over loss. *See Lawless* v. *Sullivan*, 6 App. Cas. 373, and the cases there cited.

(*e*) This subsection is not easily distinguished from the subsection which follows it. It is submitted that the following may be their construction:

1. Where the annual income of any person derived from his personal earnings does not exceed $700, he is absolutely exempt to the amount of his personal earnings, whether he has a larger annual income from other sources or not.

2. Where the annual income of any person (*not* derived from his personal earnings) does not exceed $1,000, he is absolutely exempt to the amount of $400, whether he had a larger annual income derived from his personal earnings or not.

3. Where the annual income derived from personal earnings exceeds $700, or where the annual income derived from other taxable sources exceed $1,000, there is no exemption in either case.

24. The annual income of any person to the amount of $400, provided the same does not exceed $1,000. (*f*) Any person entered on the roll as a wage-earner shall be entitled to the exemption provided for in this sub-section in respect of earnings or income. (*g*) R. S. O. 1877, c. 180, s. 6 (22); 43 V. c. 27, s. 4; 49 V. c. 38, s. 6. Income up to $1,000.

25. The stipend or salary of any clergyman or minister of religion, while in actual connection with any church, and doing duty as such clergyman or minister, to the extent of $1,000, and the parsonage when occupied as such or unoccupied, and if there be no parsonage the dwelling-house occupied by him, with the land thereto attached, to the extent of two acres, and not exceeding $2,000 in value. This sub-section shall not apply to a minister or clergyman whose ordinary business or calling at the time of the assessment is not clerical though he may do occasional clerical work or duty. 48 V. c. 42, s. 12. Exemption of Ministers' stipends.

26. Rental or other income derived from real estate, except interest on mortgages. (*h*) Rental of real estate, etc.

27. Household effects of whatever kind, books and wearing apparel. (*i*) R. S. O. 1877, c. 180, s. 6 (24, 25). Household effects, books, etc.

28. Vessel property of the following description, namely: steamboats, sailing vessels, tow barges and tugs; but the income earned by or derived through, or from any such property shall be liable to be assessed. 49 V. c. 38, s. 3. Vessels.

If this construction of the clauses be correct, the exemption allowed by the Legislature may in some cases be considered liberal. For a person with an income of $700 from personal earnings, and an annual income of $1,000 from mortgage investments would be only assessable for $600 of his total income of $1,700.

(*f*) See the previous note.

(*g*) The latter part of this subsection is now obsolete owing to the repeal of the other provisions of the Act relating to wage-earners. See 51 Vict. c. 29, sec. 11 (2).

(*h*) If the owner of land were taxed for the land according to its value, and also taxed for the rental which he received as income from it, he would be twice taxed. A person so situated was doubly taxed under the Act of 1859, and so the law continued till 1868, when it was altered by this sub-section. The principal secured by mortgage is exempt. See sub-s. 16 of this section.

(*i*) *All* wearing apparel is, under this sub-section, exempt from taxation. This would, probably, be held to include articles of jewelry in ordinary use. *Montague* v. *Richardson*, 24 Conn. 338; *Towns* v. *Platt*, 33 N. H. 345.

The case of income exempted from assessment.

8. Where any person derives from some trade, office, calling or profession, an income which is entitled by law to exemption from assessment, he shall not be bound to avail himself of such right to exemption, but if he thinks fit, he may require his name to be entered in the assessment roll for such income, for the purpose of being entitled to vote at elections for the Legislative Assembly (*j*) and municipal councils, and such income shall in such case be liable to taxation like other assessable income or property, and it shall be the duty of the assessor to enter the name of such person in the assessment roll. (*b*) R. S. O. 1877, c. 180, s. 7.

Realty within, but owned out of Ontario to be assessable.

9. All real property situate within but owned out of the Province, shall be liable to assessment in the same manner and subject to the like exemptions as other real property under the provisions of this Act. (*k*) R. S. O. 1877, c. 180, s. 8.

Personalty in control of agent for non-resident owner assessable.

10. All personal property within the Province in the possession or control of any agent or trustee for or on behalf of any owner thereof, who is resident out of this Province, shall be liable to assessment in the same manner and subject to the like exemption as in the case of the other personal property of the like nature under this Act. (*l*) R. S. O. 1877, c. 180, s. 9.

(*j*) Persons may now vote at municipal elections in respect of income although not possessed of real or personal property of any kind. Representation and taxation are said to be correlative. It would be unreasonable to exempt a man's income from taxation and yet give him the right to vote in respect of his income. The exemption is a privilege. If the person who is entitled to the privilege see fit to waive it and submit to taxation his right to vote follows. By 51 V. c. 4, s. 2, property or income qualification of voters as respects the Legislative Assembly, is abolished, except in certain electoral districts which shall from time to time have no assessment roll or voters' list where the same property and other qualifications which existed prior to the passing of that Act are continued. *Ib.* sec. 8.

(*k*) Real property is governed by the *lex rei sitæ*. It is, therefore, subject to the law of taxation in the place where situate regardless of the place of residence of the owner.

(*l*) "As regards personal property of a visible and tangible nature, such as cattle and chattels in the popular sense the term, and which are capable therefore of an actual situs, and differing only from land in the fact that the one is immovable, the other movable from one place to another, there is very little difficulty. Both are equally protected by the laws of the country where they are situated, and both are justly chargeable with a proportion of the local burdens of the place in which they happen to be, according to

11. The exemption to which certain officers connected with the Superior Courts were, at the time of their appointment, and on the 5th day of March, 1880, entitled by statute in respect of their salaries, is abolished as respects all persons appointed by the Lieutenant-Governor to such offices after the said 5th day of March, 1880, or hereafter, and continues in respect of such officers only as were appointed before that date. 43 V. c. 27, s. 5; 50 V. c. 7, s. 19. Exemption of certain officers of Superior Courts abolished as to future appointments

APPOINTMENT OF ASSESSORS AND COLLECTORS.

(*See also Rev. Stat.* c. 184, ss. 254-257.)

12. The council of every municipality, except counties, shall appoint such number of assessors and collectors for the municipality as they may think necessary, but no assessor or collector shall hold the office of clerk or treasurer. (*m*) R. S. O. 1877, c. 180, s. 10; 44 V. c. 25, s. 12. Assessors and collectors to be appointed.

13. Such councils may assign to such assessors and collectors the assessment district or districts within which they shall act, and may prescribe regulations for governing them in the performance of their duties. R. S. O. 1877, c. 180, s. 11. Municipality may be divided into assessment districts.

DUTIES OF ASSESSORS.

(*See The Manhood Suffrage Act*, 51 V. c. 4.)

14—(1) The assessor or assessors shall prepare an assessment roll, (*n*) in which, after diligent inquiry, he or they Assessment rolls, their form, contents, etc.

all just principles of taxation." *Per* Burton, J., in *Nickle* v. *Douglas*, 37 U. C. Q. B. 60.

(*m*) See s. 254 of the Municipal Act. The treasurer of plaintiffs, who was also clerk, was in that capacity permitted by resolution of the council to retain the collector's roll for three months and he was granted a percentage on moneys received by him for taxes. In an action against him and his surety, it was held that that temporary function was not of such a nature as to terminate his duties as treasurer by necessary implication, and that when the money came to his hands with which he charged himself as treasurer, the responsibility of the surety began, but that the latter should not be charged with any sums which did not appear in the books of the former as treasurer, and which were referable to taxes otherwise received by him. *Village of Weston* v. *Conron*, 15 O. R. 595.

(*n*) The assessment as respects real property, is the mode provided for ascertaining the actual value thereof. Unless followed by the imposition of a rate, it creates no liability. None of the methods pointed out by the statute for the collecting and enforcing payment

shall set down according to the best information to be had—(*o*)

Names of residents.

1. The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the municipality who have taxable property therein, or in the district for which the assessor has been appointed; (*p*)

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of a rate can apply until a rate has been actually imposed. *Corbett* v. *Taylor*, 23 U. C. Q. B. 454. "There is no debt properly due or incurred until the rate on the dollar is imposed, for until then the amount to be paid is not known, although the person and the property assessed are charged from the time of notice of the assessment for such sum as may afterwards be rated against, or imposed upon the value of the property so assessed." *Devanney* v. *Dorr*, 4 O. R. 206, 211. But the assessment roll, when completed, is the foundation of all proceedings with a view to elections or taxation. See sec. 49. And all copies and lists ought to correspond with it, for it is the primary or original roll. *Per* Adam Wilson, J., in *Laughtenborough* v. *McLean*, 14 U. C. C. P. 180. But while this is so, there is no special provision whatever declaring it to be an offence to add to or alter such a roll. *Reg.* v. *Preston*, 21 U. C. Q. B. 86. An assessor is not bound to enquire into the trusts upon which lands are held, but to view each man's premises, and to find out whether or not he is assessable or whether or not he comes under any of the exemptions allowed by law. *Franchon* v. *St. Thomas*, 7 U. C. L. J. 245.

(*o*) It is no excuse for an assessor departing from the instructions laid down for his guidance to say that some member or members of the municipal council ordered him to do as he did. His acceptance of the office obliges him to fulfil the duties which the statute attaches to the office. No municipal council has power to override the positive regulations laid down by the statute. The honest performance of the duties prescribed is essential to the real good of all the ratepayers. If the property, real or personal, of some ratepayers be undervalued the burden of other ratepayers is thereby increased. The amount to be levied is distributed among the several ratepayers according to the assessed value of their property, real and personal. Property assessed for less than its value escapes its due proportion of the burthen of taxation, but as the whole amount to be taxed cannot be altered, other property must bear more than its due proportion. See secs. 225 *et seq.* for penalties imposed on assessors neglecting their duty.

(*p*) "Taxable persons" may be either residents or "non-residents," who have requested their names to be entered on the roll. The names and surnames, *in full*, of all such persons (if the same can be ascertained) should be entered on the roll. There cannot be too much particularity in this respect. The roll is, as it were, a judgment roll, the highest evidence of a debt, recoverable by process of a most summary character. Even the description of persons on the roll as executors or trustees does not absolve them from personal liability for taxes, or save their goods from distress for

2. And of all non-resident owners who have given the notice in writing mentioned in section 3, and required their names to be entered in the roll. (*q*) Of non-residents.

3. The description and extent or amount of property assessable against each. (*r*) R. S. O. 1877, c. 180, s. 12 (1-3). Property assessable.

(2) In the case of every township, town, or incorporated village, it shall also be the duty of the assessor or assessors, when making the annual assessment, to inquire of each resident taxable party whether there has been a birth or death in the family within the previous twelve months, and if either, whether the same has been registered or not; if it has not been registered the assessor shall put the figure 1 opposite the name in the column headed "Birth" or "Death," as the case may be; if registered the letter "R" in the column (28) set apart for "Registered." 44 V. c. 4, s. 1 (*part*); 50 V. c. 7, s. 20. Inquiry as to births and deaths.

(3) The assessor shall set down the particulars in separate columns, as follows : Further particulars.

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taxes. *Dennison* v. *Henry*, 17 U. C. Q. B. 276. Persons assessed in a representative character, as trustee, guardian, executor or administrator, should however, be assessed as such, with the addition to the name of the representative character. Sec. 41.

(*q*) An assessor cannot legally of his own motion insert the name of a non-resident on the roll. His only power to do so is when the latter shall have given the notice in writing required by section 3. "The plaintiffs seem to have proceeded on the idea that if the owner be *known*, the assessor might assess him on his roll by name for his lands within the municipality, whether he himself was a resident within the municipality or not. But the whole frame of the Act . . . shows that not to have been the intention." *Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 E. & A. 283.

(*r*) The assessor should set down the description *and* extent or amount of property assessable against each taxable person. If land, it should be assessed as granted, as subsequently divided, or as actually owned by the party taxable. If the person taxable be the owner of several lots, the lots should be as much as possible kept distinct, and not unnecessarily thrown together. See notes to sec. 170. It is the duty of the assessor to assess village lots the property of non-residents separately, placing opposite to each the value and amount of assessment. *Black* v. *Harrington*, 12 Grant 175. A whole lot returned by the Surveyor-General must be assessed as one lot, though half of it be in one concession and half in another. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594. On a grant of several lots, each must be separately assessed. *Ib.* See further, notes to secs. 170 and 178.

Column 1.—The successive number on the roll. R. S. O. 1877, c. 180, s. 12 (4).

Column 2.—Name and post office address of taxable party. 42 V. c. 32, s. 1.

Column 3.—Occupation, and in the case of females, a statement whether the party is a spinster, married woman, or widow, by inserting opposite the name of the party the letter "S," "M" or "W," as the case may be. R. S. O. 1877, c. 180, s. 12 (4); 48 V. c. 42, s. 13.

Column 4.—Statement whether the party is a freeholder or tenant by inserting opposite the name of the party the letter "F." or "T." as the case may be; and where the party is entitled to be entered on the roll as qualified to vote under *The Manhood Suffrage Act*, there shall also be inserted opposite his name in said column the letters "M. F." and where the party is within the meaning of *The Municipal Act*, a "farmer's son," there shall also be similarly inserted the letters "F.S." 51 V. c. 29, s. 11 (3). See also 51 V. c. 4, s. 11 (1).

51 V. c. 40.

Rev. Stat. c. 184.

Column 5.—The age of the assessed party.

Column 6.—Name and address of the owner, where the party named in column 2 is not the owner.

Column 7.—School section, and whether public or separate school supporter.

Column 8.—Number of concession, name of street, or other designation of the local division in which the real property lies. (*s*)

Column 9.—Number of lot, house, &c., in such division.

Column 10.—Number of acres, or other measure shewing the extent of the property.

Column 11.—Number of acres cleared, (*or*, in cities, towns, or villages, whether vacant or built upon.)

Column 12.—Value of each parcel of real property.

(*s*) Opposite the name of every person qualified to be a voter the assessor shall also in this column enter. (*a*) In the assessment roll of a city, town, or village, the residence of such person by the number thereof (if any), and the street or locality whereon or wherein the same is situate; (*b*) In the assessment roll of a township the concession wherein, and the lot or part of a lot whereon, such person resides; and in all cases, any additional description, as to locality or otherwise, which may be reasonably necessary to enable the residence to be ascertained and verified. 51 Viet. c. 4, s. 11 (2).

Column 13.—Total value of real property.

Column 14.—Value of personal property other than income.

Column 15.—Taxable income.

Column 16.—Total value of personal property and taxable income.

Column 17.—Total value of real and personal property and taxable income.

Column 18.—Statute labour (in case of male persons from twenty-one to sixty years of age), and number of days' labour.

Column 19.—Dog tax; number of dogs and number of bitches.

Column 20.—Number of persons in the family of each person rated as a resident.

Column 21.—Religion.

Column 22.—Number of cattle.

Column 23.—Number of sheep.

Column 24.—Number of hogs.

Column 25.—Number of horses.

Column 26.—Birth.
Column 27.—Death.
Column 28.—Registered.
} *These 3 columns apply to townships, towns, and incorporated villages only.* 44 V. c. 25, s. 1; 50 V. c. 7, s. 20.

Column 29.—Acres of woodland.

Column 30.—Acres of swamp, marsh, or waste land.

Column 31.—Acres of orchard and garden.

Column 32.—Number of acres under fall wheat. 45 V. c. 28, s. 4.

Column 33.—Date of delivery of notice under section 47. R. S. O. 1877, c. 180, s. 12 (4). See Schedule B.

Column 34.—Each and every steam boiler in the municipality used for driving machinery or for any manufacturing purpose, with the name of owner and the purpose for which the same is used.

The clerk of the municipality shall, on the first day of June in each year, return to the Provincial Secretary the

number of such steam boilers as shewn by such roll. 51 V. c. 29, s. 4.

Evidence on which Assessor to enter persons as Separate School supporters.

Rev. Stat. c. 225.

(4) In any case where the trustees of any Roman Catholic separate school avail themselves of the provisions contained in section 120 of *The Public Schools Act*, for the purpose (amongst others) of ascertaining through the assessors of the municipality the persons who are the supporters of separate schools in such municipality, the assessor shall accept the statement of, or on behalf of any ratepayer that he is a Roman Catholic, as sufficient *prima facie* evidence for placing such person in the proper column of the assessment roll for separate school supporters, or if the assessor knows personally any ratepayer to be a Roman Catholic this shall also be sufficient for placing him in such last mentioned column. 42 V. c. 32, s. 2.

Mode of Assessing Real Property.

Land to be assessed in the municipality or ward.

Personal property.

15. Land shall be assessed in the municipality in which the same lies, and, in the case of cities and towns, in the ward in which the property lies; and this shall include the land of incorporated companies, as well as other property, (*t*) and when any business is carried on by a person in a municipality in which he does not reside, or in two or more municipalities, the personal property belonging to such person shall be assessed in the municipality in which such personal property is situated, and against the person in possession or charge thereof, as well as against the owner. (*u*) R. S. O. 1877, c. 180, s. 13.

Land occupied by owner to be assessed in his name.

16. Land occupied by the owner shall be assessed in his name. (*v*) R. S. O. 1877, c. 180, s. 14.

(*t*) See note *i* to sec. 6 of this Act.

(*u*) Personal property of a person having a farm, shop, factory, office, or other place of business, must, as a rule, be assessed at the place of business. Sec. 36. If a person has several places of business in different municipalities, then, according to this section, the property is to be assessed at the place or places where situate. See sec. 36, sub-s. 2. If a person has no place of business, then he is to be assessed at the place of residence. Sec. 37. See further, note *i* to sec. 6.

(*v*) The word "owner" is here used as a word of a very wide signification. Upon seeing land occupied by an apparent owner, the assessor is bound to assess the occupant for it, no matter upon what trust the freehold of the land is held. See *Dennison* v. *Henry*, 17 U. C. Q. B. 276; *Franchon* v. *St. Thomas*, 7 U. C. L. J. 245. In

When land not occupied by the owner, but owner is known.

17. Land not occupied by the owner, but of which the owner is known and, at the time of the assessment being made, resides or has a legal domicile or place of business in the municipality, or has given the notice mentioned in section 3, (*w*) shall be assessed against the owner alone, if

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Lister v. *Lobley*, 7 A. & E. 124, the trustees of a turnpike road were authorized to enter and take certain land, &c., making satisfaction to the *owners* or *proprietors* for their loss, and it was held that compensation was to be made not only to the owners in fee simple, but to lessees for years. In *Chauntler* v. *Robinson*, 4 Ex. 163, which was an action brought by a person against his neighbour for not keeping the house of the latter in repair, whereby, &c., Parke, B., said: "The term 'owner,' as well as 'proprietor,' is ambiguous. It may mean that the defendant had the whole legal interest in the house at the time of the wrong complained of, or that he was owner of the whole or some interest, as distinguished from that of the tenant in possession;" &c. *Ib.* 170. In *Hopkins* v. *Provincial Ins. Co.*, 18 U. C. C. P. 74, a person having only a leasehold interest was held to be the owner within the meaning of a question put to him before the issue of the notice. In *Bowditch* v. *Wakefield Local Board of Health*, L. R. 6 Q. B. 567, a trustee, in whom was vested a public school for the education of poor children, was held to be the owner for the purpose of taxation, under the secs. 2 and 69 of 11 & 12 Vict. c. 63. See further *School Board of London* v. *Vestry of St Mary, Islington*, 1 Q. B. D. 65. By sec. 33 of the Town Police Clauses Act, 1847, (10 & 11 Vict. c. 89), the commissioners may send engines, beyond the limits of the special Act for extinguishing fire in the neighbourhood of the limits; and the owner of the lands and buildings where such fire shall have happened, shall in such case defray the actual expense which may be thereby incurred: Held, that the occupier was the owner of lands within the meaning of the enactment, and liable for expenses incurred in sending an engine to extinguish a fire at a haystack belonging to him. *Lewis* v. *Arnold*, L. R. 10 Q. B. 245. It is the duty of the assessor to enter on the roll the names of all persons in occupation, whom, after diligent enquiry, he believes to be owners. It does not seem that a *personal* occupation of the lot is necessary. A lot may be used with another part of the same farm, and that without there being a house upon it, or even a barn—the house and farm buildings being on an adjoining farm. But the occupancy must be so visible that the assessor can see it. *Bank of Toronto* v. *Fanning*, 17 Grant 514; 18 Grant 391. If the person served as owner omit to appeal, he is bound by the assessment, whether owner or not. *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248.

(*w*) The duties of the assessor under the first part of this section relate to land not coming under the description of the previous section as "land occupied by the owner," but to lands such as described in sec. 3 as "unoccupied land." The assessor has no legal right to place on the roll the name of a non-resident owner merely because he is known to him. His right to do so only arises when the latter has given the notice required by sec. 3. See notes to that section. But in the case of a person residing in or having a legal domicile or

the land is unoccupied, or against the owner and occupant, if the occupant is any other person than the owner. (*x*) R. S. O. 1877, c. 180, s. 15.

When owner not resident in municipality but resident in Province.

18. If the owner of the land is not resident within the municipality, but resident within this Province, then, if the land is occupied, it shall be assessed in the name of and against the occupant and owner; but if the land is not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident. (*y*) R. S. O. 1877, c. 180, s. 16.

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place of business within the municipality, his name, when known, may be placed on the roll. A man's place of residence may not be his domicile or place of business. There are cases in which place of abode and place of business mean the same thing. See *Haslope* v. *Thorne*, 1 M. & S. 103; *Alexander* v. *Milton*, 2 C. & J. 424; *Roberts* v. *Williams*, 2 C. M. & R. 561; *Johnson* v. *Lord*, M. & M. 444. But place of residence and place of business do not necessarily mean the same thing. *Reg.* v. *Deighton*, 5 Q. B. 896; *Reg.* v. *Coward*, 16 Q. B. 819; *Reg.* v. *Hammond*, 17 Q. B. 772; *Reg.* v. *Gregory*, 1 E. & B. 600; *Reg.* v. *Spratley*, 6 E. & B. 363. See also note *a* to sec. 35.

(*x*) If the land be occupied the occupant should be assessed. If not occupied by the owner both the occupant and the owner should be assessed. If unoccupied, then the owner alone must be assessed. The occupation here meant is not simply possession as by a child, servant, or caretaker, but by a person having an interest of some kind in the land. The occupation need not be a personal one in this sense, that the occupant should have his house on it. It will be enough if he have his house elsewhere in the municipality, and so work it as to be visibly possessed of it. *Bank of Toronto* v. *Fanning*, 17 Grant 514; *Warne* v. *Coulter*, 25 U. C. Q. B. 177; see also *Fryer* v. *Bodenham*, 19 L. T. N. S. 645. But merely sinking a post in the ground or some other trifling act of that character will not be sufficient to constitute occupation. *Grant* v. *Local Board of Oxford*, 19 L. T. N. S. 378. Where the occupation is necessary for the performance of services, and the occupier is required to reside on the premises in order to perform the services, the occupation being strictly auxilliary to the performance of duties which the occupier must perform, the occupier is a servant and ought not to be assessed. *Hughes* v. *Overseers of Chatham*, 5 M. & G. 54; *Dobson* v. *Jones*, *Ib.*, 112; *Clark* v. *Overseers of the Parish of St. Mary Bury St. Edmunds*, 1 C. B. N. S. 23; *Reg.* v. *Overseers of Whaddon*, L. R. 10 Q. B. 230; *Fox* v. *Dalby*, L. R. 10 C. P. 285; *Smith* v. *Overseers of Seghill*, L. R. 10 Q. B. 422; *Attorney General* v. *Mutual Tontine Westminster Chambers Association Limited*, L. R. 10 Ex. 305; *White* v. *Maynard*, 15 Am. 28.

(*y*) The meaning of this section is not free from doubt. If land be occupied, no doubt it should be assessed in the name of the occupant. If unoccupied, and owned by a person living in the municipality, it may be assessed in his name. But if unoccupied and owned

When owner not resident in rovince.

19. In the case of real property, owned by a person not resident within this Province, who has not required his name to be entered on the assessment roll, then if the land is occupied it shall be assessed in the name of and against the occupant as such, and he shall be deemed the owner thereof for the purpose of imposing and collecting taxes upon and from the same land ; (*z*) but if the land is not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident ; (*a*) and it shall not be necessary that the name of such non-resident or owner be inserted in the assessment roll, but it shall be sufficient to mention therein the name of the reputed owner, or the words "Owner Unknown," according to the assessor's knowledge or information. R. S. O. 1877, c. 180, s. 17.

When land assessed against owner and occupant.

20.—(1) Where land is assessed against both the owner and occupant, or owner and tenant, the assessor shall (*b*)

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by a non-resident, it can only be assessed in his name on his request in writing. See note *e* to sec. 3. This section provides that if the land be occupied "it shall be assessed in the name of and against the occupant *and* owner." The question is, whether this is to be done where the owner is a non-resident of the municipality, and has not requested his name to be entered on the roll. The language of the section is broad enough to cover all owners, whether resident within or without the municipality. But the narrower construction seems to be the correct one. Persons in the occupation of land in the sense that they are in exclusive occupation of any part of it, whether above or below, are liable to be rated in England for poor rate. See *Pimlico, &c., Tramway Co.* v. *Greenwich*, L. R. 9 Q. B. 9 ; see further, *Allan* v. *Overseers of the Poor, Liverpool*, L. R. 9 Q. B. 180 ; *London and North Western R. W. Co.* v. *Buckmaster*, L. R. 10 Q. B. 70, 444 ; *Cory* v. *Bristow*, 1 C. P. D. 54 ; 2 App. Cas. 262 ; *Lancashire Telephone Co.* v. *Overseers of Manchester*, 13 Q. B. D. 700 ; 14 Q. B. D. 267.

(*z*) See note *x* to sec. 17.

(*a*) The only power to assess on the owner, as owner, when a non-resident is on request. See note *e* to sec. 3.

(*b*) A strict compliance with this section is not necessary to the validity of an assessment. *DeBlaquiere* v. *Beeker*, 8 U. C. C. P. 167 ; *Reg. ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27. In the last mentioned case Mr. Dalton said, "The name of the defendant is not set down under that of Henry Bowen and bracketed with it, nor is the assessment against the defendant separately numbered on the roll. Some other deviations from the statutory form will be observed. The defendant's name, however, is written in the general heading 'Names of Taxable Parties,' and that it was so written for the purpose of assessing him is known from other facts. Are these deviations, then, so essential as to render the assessment void ? After examining the English cases and our own, as far as I have been referred to or

place both names within brackets on the roll, and shall write opposite the name of the owner the letter "F," and opposite the name of the occupant or tenant the letter "T"; and both names shall be numbered on the roll. (*c*)

[*Sub-s. 2 of this section was repealed by 51 V., c. 29, s. 11 (2).*]

Ratepayer to be counted only once.

(3) No ratepayer shall be counted more than once in returns and lists required by law for municipal purposes; and the taxes may be recovered from either the owner, tenant or occupant or from any future owner, tenant or occupant, saving his recourse against any other person. (*d*) 48 V. c. 42, s. 3.

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have been able to find them, I have come to the conclusion that the assessment is good. It would certainly seem an extraordinary thing, considering the class that assessors must necessarily come from, that variances from the form of the assessment should vitiate it." This decision was approved of and followed by the Court of Queen's Bench. *In re Johnson and Lambton*, 40 U. C. Q. B. 305. See, further, *Morgan* v. *Parry*, 17 C. B. 334, and *Bramfitt* v. *Bremner*, 9 C. B. N. S. 1; *Applegarth* v. *Graham*, 7 U. C. C. P. 171; but see, also, *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67. If an assessor, or any other officer of a municipality, omit to follow the plain directions in an Act of Parliament, and any loss thereby arises to the municipality, it would seem that the officer causing the loss would be held answerable therefor. *Christie* v. *Johnson*, 12 Grant 534.

(*c*) The obligation of the landlord is *prima facie* to pay taxes. See sec. 24. If the tenant agree to pay taxes, the obligation is shifted as between them. But in regard to the municipality, taxes may be recovered from either, and not only so, but from "any future owner or occupant," saving his recourse against any other person. See *Smith* v. *Shaw*, 8 U. C. L. J. 297; *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Warne* v. *Coulter*, 25 U. C. Q. B. 177.

(*d*) The way in which this section is expressed would lead one to suppose that *future* owners, tenants, or occupiers can alone be made liable when *both* the owner and tenant or occupant have been assessed, but that is not the proper construction to be placed on the section. It should be read in connection with sections 17 and 18. The words used in section 7 of the Assessment Act of 1853: "And the taxes thereon may be recovered from either or from any future owner or occupant, saving his recourse against the other party," had reference not to the particular case alone of owner and occupant being assessed together, *but of either of them being assessed separately.* "If they were both assessed, the taxes were to be recovered from either of them. And in *every* case, if the owner or occupant did not pay, the taxes were to be recovered from any *future* owner or occupant. This was plainly the construction of sec. 7 of the Act of 1853, for why were future owners or occupants made liable when both owner *and* occupant were assessed and not when the owner *or* occupant was singly assessed? In both cases the taxes are equally a special lien on the land, for which the land may be

Assessment of land owned or occupied by several persons.

21—(1) When the land is owned or occupied by more persons than one, and all their names are given to the assessor, they shall be assessed therefor in the proportions belonging to or occupied by each respectively; (*e*) and if a portion of the land so situated is owned by parties who are non-resident and who have not required their names to be entered on the roll, (*f*) the whole of the property shall be assessed in the names furnished to the assessor as the names of the owners, saving the recourse of the persons whose names are so given against the others. (*g*)

Assessment of partnership property.

(2) If any member of a partnership so requests, his share or interest of, or in the real or personal property of, or belonging to the partnership, shall for all purposes and in all respects be assessed as if the same were the separate and individual property of such member, and formed no part of said partnership property.

Assessment of property of company for school purposes.

(3) A company may, by notice in that behalf to be given to the clerk of any municipality wherein a separate school for Roman Catholics exists, require any part of the real property of which such company is either the owner and occupant, or, not being such owner, is the tenant, occupant or

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sold. Why should a *future* occupant be liable when his original assessed owner could still be resorted to? Or, why should a future owner be liable when the original assessed occupant is in possession, and, of course, liable? Either owner or occupant shall pay when both are assessed; and future owners and occupiers are liable in every case to pay, saving their recourse against any other person. *Per* Wilson, J., in *Anglin* v. *Minis*, 18 U. C. C. P. 170, 177. The goods of the future occupant cannot be legally distrained and sold for the taxes imposed on the *personal property* of the former occupant. *Squire* v. *Moony*, 30 U. C. Q. B. 531. But if any portion of the tax distrained for be in respect of the realty, trespass will not lie. *Ib.*

(*e*) Where on an assessment roll under the general heading "Names of Taxable Parties," were entered the names of Ker, William and Henry, for two separate parcels of land, and in the proper columns were the letters "F" and "H," and in the columns headed "Owners" and "Address," opposite to the parcels of land, "Wm. Ker and Bros.," it was held that Wm, Ker and Henry Ker and not "Wm. Ker and Bros. were the persons in whose names the properties were rated. *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67; see further, *Reg. ex rel Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27; *In re Johnson and Lambton*, 40 U. C. Q. B. 397.

(*f*) See note *e* to s. 3.

(*g*) See note *d* to s. 20.

actual possessor, and any part of the personal property (if any) of such company, liable to assessment, to be entered, rated and assessed for the purposes of said separate school, and the proper assessor shall thereupon enter said company as a separate school supporter in the assessment roll in respect of the property specially designated in that behalf in or by said notice, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and so much of the property as shall be so designated shall be assessed accordingly in the name of the company for the purposes of the separate school and not for public school purposes, but all other property of the company shall be separately entered and assessed in the name of the company as for public school purposes; provided always that the share or portion of the property of any company entered, rated or assessed in any municipality for separate school purposes, under the provisions of this section, shall bear the same ratio and proportion to the whole of the property of the company assessable within the municipality that the amount or proportion of the shares or stock of the company, so far as the same are paid or partly paid up, and are held or possessed by persons who are Roman Catholics, bears to the whole amount of such paid or partly paid up share or stocks of the company.

(*a*) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or to the effect following:

To the Clerk of (*describing the municipality*).

Take notice that (*here insert the name of the company so as to sufficiently and reasonably designate it*) pursuant to a resolution in that behalf of the directors of said company requires that hereafter and until this notice is either withdrawn or varied, so much of the property of the company assessable within (*giving the name of the municipality*) and hereinafter specially designated shall be entered, rated, and assessed for separate school purposes, namely, one-fifth *(or as the case may be)* of all real property, and one-fifth *(or as the case may be)* of all personal property of said company, liable to assessment in said municipality.

Given on behalf of the said company this *(here insert date)*.

R. S. Secretary of said Company.

(*b*) Any such notice given in pursuance of a resolution in that behalf of the directors of the company, shall for all purposes be deemed to be sufficient, and every such notice so given shall be taken as con-

tinuing and in force and to be acted upon, unless and until the same is withdrawn, varied or cancelled by any notice subsequently given, pursuant to any resolution of the company or of its directors.

(*c*) Every such notice so given to such clerk shall remain with and be kept by him on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect any assessment roll, and the assessor shall in each year, before the completion and return of the assessment roll, search for and examine all such notices as may be so on file in the clerk's office, and shall thereupon in respect of the said notices (if any) follow and conform thereto and to the provisions of this Act in that behalf.

(*d*) The word "company" in this section shall mean and include any body corporate. 49 V. c. 38, s. 4.

[*Secs. 22 & 23 were repealed by 51 V., c. 29, s. 11 (2).*]

When tenants may deduct taxes from rent.

24. Any occupant may deduct from his rent any taxes paid by him, if the same could also have been recovered from the owner, or previous occupant, unless there is a special agreement between the occupant and the owner to the contrary. (*h*) R. S. O. 1877, c. 180, s. 21.

(*h*) The occupant cannot deduct the taxes under this provision where there is no right to collect the taxes from him. *Carson* v. *Veitch*, 9 O. R. 706. If the lease contain no provision as to the payment of taxes, it is the duty of the landlord, as owner of the land, to pay them. *Dove* v. *Dove*, 18 U. C. C. P. 424; see further, *Rook* v. *Mayor of Liverpool*, 17 C. B. N. S. 240; and *Sheffield Water Works Co.* v. *Bennett*, L. R. 7 Ex. 409. But if between the owner and the occupant there be a special agreement to the contrary, of course there will not be the right to deduct taxes from rent. Defendant took a written agreement for a lease of certain premises, which lease was silent as to taxes, but verbally agreed to pay them; no lease was ever executed owing to a disagreement on another point. Defendant occupied the premises for four years, paying taxes for three years without objection. When sued for rent subsequently accrued, he claimed to set off the taxes, on the ground that as the agreement made no provision for them, and could not be added to by verbal evidence, they must fall on the landlord: Held, that, having voluntarily made the payments in pursuance of his own agreement, even if it were without consideration, he could not recover back or set off such payments. *McAny* v. *Tickell*, 23 U. C. Q. B. 499. It is not said in the Act when, or from quarter or month, the occupant may deduct the taxes from his rent; and under a similar enactment in England

Assessor to note non-residents if required, on the roll.

25. The assessor shall write opposite the name of any non-resident freeholder, who requires his name to be entered on the roll, as hereinbefore provided, (*i*) in column number 3, the letters "*N. R.*," and the address of such freeholder. (*j*) R. S. O. 1877, c. 180, s. 22.

How property estimated.

26.—(1) Except in the case of mineral lands hereinafter provided for, real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. (*k*)

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it was held that a tenant could not occupy for several years, paying taxes, and claim to deduct from his last quarter's rent the whole amount of taxes paid by him during the term. *Stubbs* v. *Parsons*, 3 B. & Al. 516. And our Act has in one case received a similar construction. *Wade* v. *Thompson*, 8 U. C. L. J. 22. An ordinary lease, under the words in the statute, containing a covenant "to pay taxes," covers a special rate created by a corporation by-law, as well as other taxes. *In re Michie and Toronto*, 11 U. C. C. P. 379. Defendant in 1872 leased a farm from the plaintiff for a year from 27th September, 1872, and covenanted to pay all taxes, rates, assessments, whatsoever whether parliamentary, municipal or otherwise, which now are, or which during the continuance of the term shall at any time be rated, charged, assessed or imposed in respect to the premises. Held, that defendant was not liable for the taxes for 1872. *MacNaughton* v. *Wigg*, 35 U. C. Q. B. 111. But see *Heyden* v. *Castle*, 15 O. R. 257. See further *Hurst* v. *Hurst*, 4 Ex. 571.

(*i*) See sec. 3 and notes thereto.

(*j*) The omission to do as here directed would not invalidate the assessment so far as made. See *DeBloqueir* v. *Becker*, 8 U. C. C. P. 167; see further, note *b* to sec. 20.

(*k*) "The question of what is the proper principle of valuation is one extremely general in its application. It affects the pecuniary interests of almost every one, not excepting the Judges themselves, and we should therefore not go out of our way to express opinions upon it." *Per* Robinson, C. J., in *In re Dickson and Galt*, 10 U. C. Q. B. 395, 398. There is nothing that men so much differ about as the value of property. See *Mersey Dock Co.* v. *Liverpool*, L. R. 9 Q. B. 84; *Reg.* v. *London & North Western R. W. Co.*, L. R. 9 Q. B. 134. It is, to a great extent, a matter of opinion. The opinions of men on such a subject are very materially affected, more so than they are perhaps aware of by the point of view from which they consider it. A man who is impressed with a consideration of how much a thing is worth, will entertain a widely different opinion from him who simply looks at it as a thing to be purchased in expectation of profit, whether by the employment of it or selling it again. *Per* Draper, C. J., in *McQuaig* v. *Unity Fire Ins. Co.*, 9 U. C. C. P. 88. Perhaps, after all, the best standard of value is that mentioned, in this section—"actual cash value," such as the property would be appraised at, "in payment of a just debt from a solvent debtor." See further, notes to sec. 228.

(2) In estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act. R. S. O. 1877, c. 180, s. 23. Mineral lands.

27—(1) In assessing vacant ground, or ground used as a farm, garden, or nursery, and not in immediate demand for building purposes, in cities, towns, or villages, whether incorporated or not, the value (*l*) of such vacant or other ground shall be that at which sales of it can be freely made, and where no sales can be reasonably expected during the current year, (in case the council so directs) the assessors shall, in cities, and where the extent of such ground exceeds ten acres, in towns and incorporated villages, value such land as though it was held for farming or gardening purposes, with such per centage added thereto as the situation of the land reasonably calls for; and such vacant land, though surveyed into building lots, if unsold as such, may be entered on the assessment roll as so many acres of the original block or lot, describing the same by the description of the block or by the number of the lot and concession of the township in which the same is situated, as the case may be. (*m*) R. S. O. 1877, c. 180, s. 24 (1); 43 V. c. 27, s. 7. What shall be deemed vacant land, and how its value shall be calculated in cities, etc.

(2) In such case, the number and description of each lot, comprising each such block shall be inserted in the assessment roll; and each lot shall be liable for a proportionate share as to value, and the amount of the taxes, if the property is sold for arrears of taxes. (*n*) R. S. O. 1877, c. 180, s. 24 (2). Assessment thereof.

But it is no defence to an action for taxes, that the property was excessively rated. *London* v. *Great Western R. Co.*, 17 U. C. Q. B. 267; see also, *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U. C. Q. B. 194; see further, *Mersey Docks and Harbour Board* v. *Overseers of Birkenhead*, L. R. 8 Q. B. 445.

(*l*) See preceding note.

(*m*) As to the right to replace as it was before land which has been laid out in lots. See *Re Allan* 10 O. R. 110.

(*n*) This is essential for the preservation of the relation of the lots to each other, so as properly to adjust the burden of taxation in the event of the sale of some portion thereof for taxes. The plan of a survey of a portion of a town lot was registered in the proper

When not held for sale, but for gardens, etc.

28. When ground is not held for the purposes of sale, but *bona fide* inclosed and used in connection with a residence or building as a paddock, park, lawn, garden, or pleasure-ground, it shall be assessed therewith, at a valuation which, at six per centum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth for the purposes for which it is used, reference being always had to its position and local advantages unless by by-law the council requires the same to be assessed like other ground. (*o*) R. S. O. 1877, c. 180, s. 25; 43 V. c. 27, s. 6.

Railway companies to furnish certain statements to clerks of municipalities.

29. Every railway company shall annually transmit, on or before the 1st day of February, (*p*) to the clerk of every municipality in which any part of the roadway or other real property of the company is situated, a statement shewing:—

1 The quantity of land occupied by the roadway, and the actual value thereof, according to the average value of land

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registry office, but without being properly authenticated in the manner required by the Registry Act not being duly certified by a surveyor: Held, notwithstanding this irregelarity, that the municipality had the right to assess these lots and levy the taxes assessed by sale in the usual way. *Aston* v. *Innis*, 26 Grant 42. Some of the lots in the said plan having been assessed as lying on Thomas street were sold for non-payment and conveyed upon non-redemption by that description. Upon their again becoming liable to sale for arrears of taxes, the authorities made a change designating the lots as being on side road without any by-law authorizing such change or anything to shew that it was made otherwise than upon the assessment rolls and other documents in relation to the collection of taxes: Held, that the owner of such lots was bound to pay the taxes upon them by whatever designation they were entered on the roll, and it was at his peril if he omitted to pay. *Ib.*

(*o*) The preceding section provides for the assessment of vacant land, or land used as a farm, garden or nursery, and not in immediate demand for building purposes. This section applies to land not held for purposes of sale, but *bona fide* inclosed and used as a paddock, park, lawn, garden or pleasure ground, used in connection with a residence or building; in which case, unless a by-law is passed directing it to be assessed like other ground, the valuation is to be, not as for purposes of sale, but for the purpose for which the land is used, reference being had to its position and local advantages. This is to be done by assessing such land, with the residence or building, at a valuation which, at six per cent. per annum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth. See *Dudman* v. *Vigar*, L. R. 6 H. L. 212.

(*p*) *On or before*, &c. See note *g* to sec. 248 of the Municipal Act.

in the locality, as rated on the assessment roll of the previous year;

2. The real property, other than the roadway in actual use and occupation by the company, and its value; and

3. The vacant land not in actual use by the company, and the value thereof, as if held for farming or gardening purposes;

Duties of clerks thereon.

And the clerk of the municipality shall communicate such statement to the assessor, who shall deliver at, or transmit by post to, any station or office of the company a notice addressed to the company of the total amount at which he has assessed the real property of the company in his municipality or ward, shewing the amount for each description of property mentioned in the above statement of the company; (*q*) and such statement and notice, respectively, shall be held to be the statement and notice required by sections 42 and 47 of this Act. (*r*) R. S. O. 1877, c. 180, s. 26.

Proceedings in case of non-resident lands.

30. As regards the lands of non-residents who have not required their names to be entered in the roll, (*s*) the assessors shall proceed as follows :—

(*q*) It is only the land occupied by the road (not the superstructure) that is liable to assessment. *Great Western R. W. Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 262; *Toronto* v. *Great Western R. W. Co.*, 25 U. C. Q. B. 570; *Central Vermont R. W. Co.* v. *Town of St. Johns*, 14 S. C. R. 288. The assessment must be according to the average value of land in the locality. *Great Western R. W. Co.* v. *Ferman*, 8 U. C. C. P. 221.

(*r*) The statement from the company to the municipality need not be in any particular form. *Great Western R. W. Co.* v. *Ferman*, 8 U. C. C. P. 221. And the delivery of the statement by the assessor to the company of the amount at which he has assessed the real property of the company is necessary, to enable the company, if dissatisfied, to appeal. *London* v. *Great Western R. W. Co.*, 16 U. C. Q. B. 500; *Nicholls* v. *Cumming*, 25 U. C. C. P. 169. The omission of the assessor to distinguish, in his notice to a railway company, between the value of the land occupied by the road and their other real property, as required by the Act, does not absolutely void the assessment. *Great Western R. W. Co.* v. *Rogers*, 27 U. C. Q. B. 214. It is only the subject of complaint to the Court of Revision. *S. C.* 29 U. C. Q. B. 245.

(*s*) See sec. 3, and notes thereto. As to the proceedings prescribed for non-resident land assessments when the names of the owners are not given. See *Hall* v. *Farquharson*, 12 O. R. p. 604.

To be inserted in roll separately.

1. They shall insert such land in the roll separated from the other assessments, and shall head the same as *Non-residents' Land Assessments.* (*t*)

When not known to be sub-divided into lots.

2. If the land is not known to be subdivided into lots, it shall be designated by its boundaries or other intelligible description. (*u*)

When known to be sub-divided into lots.

3. If it is known to be subdivided into lots, or is part of a tract known to be so subdivided, the assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts; and, if they can obtain correct information of the subdivisions, they shall put down in the roll, and in a first column, all the unoccupied lots by their numbers and names alone, and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest; in a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and, if such quantity is a full lot, it shall be sufficiently designated as such by its name or number, but if it is part of a lot, the partshall be designated in some other way whereby it may be known. R. S. O. 1877, c. 180, s. 27.

Mode of Assessing Personal Property.

How persons deriving income from any trade or profession to be assessed.

31. Subject to the provisions of section 8, no person deriving an income exceeding $400 per annum from any trade, calling, office, profession or other source whatsoever, not declared exempt by this Act, (*v*) shall be assessed for a less sum as the amount of his net personal property than the amount of such income during the year then last past, in

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(*t*) No action will lie for the recovery of taxes against a non-resident who has not required his name to be entered on the roll. See note *e* to sec. 3. The only remedy of the municipality is against the land itself. *Ib.*

(*u*) If the land is not *known*, *&c.* It is the duty of the assessor, under sec. 14, Nos. 8 and 9, to enter the number of the concession, name of street, or *other* designation of the *local* division in which the real property is situate, and the number of the lot, house, &c., in *such* division. The object is to have some intelligible local description by which the property can be identified.

(*v*) See sec. 7, sub. s. 13, 15, 16, 17, 19, 23, 24, 25 and 26, and notes thereto, as to the incomes which are exempt from taxation.

excess of the said sum of $400, but no deduction shall be made from the gross amount of such income, by reason of any indebtedness; save such as is equal to the annual interest thereof; and such last year's income, in excess of the said sum of $400, shall be held to be his net personal property, unless he has other personal property liable to assessment, in which case such excess and other personal property shall be added together and constitute his personal property liable to assessment. (*w*) R. S. O. 1877, c. 180, s. 28.

Beneficial owner of shares may be assessed.

32. The beneficial owner of shares which do not stand in his own name may be assessed for the income he derives therefrom as if the shares stood in his own name. 43 V. c. 27, s. 2.

Personal property in Province of non-residents assessable like property of residents.

33.—(1) All personal property within the Province, the owner of which is not resident in the Province, shall be assessable like the personal property of residents, and whether the same is or is not in the possession or control, or in the hands, of an agent or a trustee on behalf of the non-resident owner; and all such personal property of non-residents may be assessed in the owner's name, as well as in the name of the agent, trustee or other person (if any) who is in the possession or control thereof. (*x*)

(2) The property shall be assessable in the municipality in which it may happen to be.

(3) This section does not apply to dividends which are payable to, or other *choses* in action which are owned by and

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(*w*) This section relates to incomes exceeding $400 derived from any trade, calling, office, profession, or other source whatsoever *not* exempt from assessment. (See sec. 7). Such income is to be computed at the amount of the ratepayers' income for the past year after deducting $400. If the ratepayer has any indebtedness, a further deduction of the interest only on the amount of such indebtedness is to be allowed. So if a ratepayer had an income of $2,000 in 1888, and claims no exemption from indebtedness, he is liable to be assessed for $1,600 in 1889. If, notwithstanding such income, he has an indebtedness to an amount of say $1,000, he is liable to assessment for $1,600 less the interest on that sum. Should the ratepayer have no other personal property liable to assessment, this shall be held to be the whole net personal property liable to be rated. If, however, he have other personal property liable to assessment, that amount shall be added to his income, and the two shall constitute his net personal property liable to assessment. See also note *d* to sub-s. 23 of sec. 7.

(*x*) See *Re North of Scotland Canadian Mortgage Co.* 31 U. C. C. P. 552; *Phœnix Ins Co.* v. *Kingston*, 7 O. R. 343.

stand in the name of, a person who does not reside in the Province. 43 V. c. 27, s. 3.

Assessment of personal property of companies.

34.—(1) The personal property of an incorporated company, other than the companies mentioned in sub-section 2 of this section, shall be assessed against the company in the same manner as if the company were an unincorporated company or partnership. (*y*)

(2) The personal property of a bank or of a company which invests the whole or the principal part of its means in gas-works, water-works, plank or gravel roads, railway and tram-roads, harbours or other works requiring the investment of the whole or principal part of its means in real estate, shall, as hitherto, be exempt from assessment; but the shareholders shall be assessed on the income derived from such companies. (*z*) 43 V. c. 27, s. 1 (1,2); 45 V. c. 28, s. 9.

Personal property of partnerships, how and where to be assessed.

35.—(1) The personal property of a partnership shall be assessed against the firm at the usual place of business of the partnership, (*a*) and a partner in his individual capacity shall

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(*y*) See *Re North of Scotland Canadian Mortgage Co.* 31 U. C. C. P. 552; *Phœnix Ins. Co.* v. *Kingston*, 7 O. R. 343.

(*z*) If the capital or principal part of the capital stock is invested in real estate such real estate is subject to assessment and it is in consequence fair that the shareholders should only be assessed on the income. See also, *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194.

(*a*) It is no easy matter to say where the usual place of business of a partnership is, where the business is such that it cannot be conducted in one place, but necessarily in several places. It is apprehended that the business is to be considered as carried on where the principal or head office is situate. In *Taylor* v. *Crowland Gas Co.*, 11 Ex. 1, it was held that a corporation *dwells* where it *carries on its business*. In *Minor* v. *London and North-Western R. W. Co.*, 1 C. B. N. S. 325, it was held that a railway company does *not* carry on its business at a receiving house or booking office kept by an agent. In *Shields* v. *Great Northern R. W. Co.*, 7 Jur. N. S. 631, it was held that a railway company does not carry on business at any place *other* than its principal office at which its business is managed. In *Brown* v. *London and North-Western R. W. Co.*, 4 B. & S. 326, it was held that this means their *general* business—not where they carry on a part or even a material part of their business. See further, *Adams* v. *Great Western R. W. Co.*, 30 L. J. Ex. 124; *Mitchell* v. *Hender*, 18 Jur. 430; *McMahon* v. *Irish North Western R. W. Co.*, 19 W. R. 212; *Ahrens* v. *McGiligat*, 23 U. C. C. P. 171. In *Ex parte Charles*, L. R. 13 Eq. 638, where manufacturers at Sheffield, rented three rooms in London, two of which were occupied by

not be assessable for his share of any personal property of the partnership which has already been assessed against the firm.

(2) If a partnership has more than one place of business, (*b*) each branch shall be assessed, as far as may be, in the locality where it is situate, for that portion of the personal property of the partnership which belongs to that particular branch; (*c*) and if this cannot be done, the partnership may

As to partnerships having more than one business locality.

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an agent who kept samples and solicited orders, it was held that the business was carried on at Sheffield and not at London. In *Attorney-General* v. *Sulley*, 4 H. & N. 769, it was held that a member resident in London of a mercantile firm established at New York for the sale of goods, and who made purchases in England for the firm in New York, was liable to income tax, but the decision was afterwards reversed. 5 H. & N. 711. Cockburn, C. J., in delivering the judgment of the Court of error, said: "The question is, whether there is a carrying on or exercise of the trade in this country. I think there is not, looking at the sense in which the term is used, and having regard to the subject matter of the statute. Wherever a merchant is established in the course of his operations, his dealings must extend over various places. He buys in one place and sells in another. But he has one *principal* place in which he may be said to trade, viz., *where his profits come home to him.* That is *where* he exercises his trade." *Ib.* 717. See further, *Attorney-General* v. *Alexander*, L. R. 10 Ex. 20; *Ex parte Breull*, 16 Ch. D. 484.

(*b*) See preceding note.

(*c*) The words are, that *each* branch shall be assessed, *as far as may be*, in the locality where it is situate, for *that portion* of the personal property of the partnership which belongs to that *particular branch.* The difficulty will be to say, *first* whether there is a branch; and secondly, what portion of the personal property belongs or appertains to that particular branch. Everything will depend upon the nature, character and extent of the business, and the mode in which the same is conducted. In almost every ordinary mercantile business there will be considerable difficulty in applying the section. It is provided that if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, in which event it shall be so assessed and shall be required to produce a certificate at each place of business of the amount of personal property assessed against it elsewhere. Whether this will apply to a firm having its principal place of business out of the Province, is a question which must rest for the decision of the Courts. It has been held that "steamboating" is a species of business which can only be assessed as a whole, where there is but one boat; and that plying between two points in different counties, such a business is not to be understood as consisting of several branches within the meaning of this section. *In re Hatt*, 7 U. C. L. J. 103. The question was raised whether the owner of a road having toll gates in different municipalities is a person having different places of business, but no decision was given on the point. *In re Hepburn and Johnson*, 7 U. C. L. J. 46.

elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business of the amount of personal property assessed against it elsewhere. R. S. O. 1877, c. 180, s. 30.

Where parties carrying on trade, etc., to be assessed for personal property.

36.—(1) Every person having a farm, shop, factory, office, or other place of business where he carries on a trade, profession, or calling, shall, for all personal property owned by him, wheresoever situate, be assessed in the municipality or ward where he has such place of business, at the time when the assessment is made. (*d*)

When the party has two or more places of business.

(2) If a person has two or more such places of business in different municipalities or wards, he shall be assessed at each for that portion of his personal property connected with the business carried on thereat; or, if this cannot be done, he shall be assessed for part of his personal property at one place of business, and for part at another; but he shall, in all such cases, produce a certificate at each place of business of the amount of personal property assessed against him elsewhere. (*e*) R. S. O. 1877, c. 180, s. 31.

When the p rty has no place of business.

37. If a person has no place of business, he shall be assessed at his place of residence. (*f*) R. S. O. 1877, c. 180, s. 32.

(*d*) A man may have his place of business in one municipality and reside in another, or in one county and reside in another. So long as resident in the Province, and having only one place of business, there might be no difficulty in assessing him at that place of business for his personal property wheresoever situate within the Province. But if he have personal property *out of the Province* there would be great difficulty in holding that such last-mentioned property should be assessed at his place of business. Such a holding would certainly be contrary to the opinion expressed in *Attorney-General* v. *Sulley*, 5 H. & N. 711. See note *a* to sec. 35; see also *In re Goodhue*, 19 Grant 366. In the last-mentioned case, Strong, V. C., intimated that the testator's grandchildren, domiciled without the Province, could not be affected by any Act of the Provincial Legislature. In *Duer* v. *Small*, 4 Blatchf. 263, it was held that the statute of a State, providing that persons doing business in the State as merchants, bankers or otherwise, though not *residents* of the State, should be assessed on all sums invested in their business, the same as if they were residents of the State, was constitutional. As to the meaning of the words "office" and "officer," see *Reg.* v. *Bridgewater*, 6 A. & E. 398; *Reg.* v. *Local Government Board*, L. R. 9 Q. B. 148.

(*e*) See note *c* to sec. 35.

(*f*) It is by sec. 14, sub s. 1, made the duty of an assessor to set

Salaries, etc., to be assessed at the place where earned.

38. Every person who holds any appointment or office of emolument to which any salary, gratuity or other compensation is attached, and performs the duties of such appointment or office within a municipality in which he does not reside, shall be assessed in respect of the amount of such salary, gratuity or other compensation at the place where he performs such duties, and he shall not be assessable therefor at his place of residence, but, if required, shall procure a certificate of being otherwise assessed under the provisions of this section; but this section shall not apply to county municipal officers, or to Government officers or officers of minor municipalities when the location of the office is fixed by law or regulation of the Government or municipality, but in such cases the salary, gratuity or other compensation, shall be assessed against the incumbent of the office in the municipality wherein he resides. (*g*) R. S. O. 1877, c. 180, s. 33; 43 V. c. 27, s. 19; 50 V. c. 32, s. 2.

Place of assessment of salaries of Government and municipal officers.

When personalty of non-

39. The personal property of a person not resident within this Province, shall be assessed in the name of and against

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down the names and surnames in full of all taxable persons *resident* in the municipality who have taxable property therein. But as a person may be taxed at his place of business and yet not be a resident of the Municipality, it follows that sec. 14, sub. s. 1, must be read as somewhat amplified. See sec. 36. Unless, however, the person taxed have either a place of business or a place of residence in the municipality he cannot be legally placed on the roll. *Cartwright* v. *Kingston*, 6 U. C. L. J. 189. Prior sections to this provide for assessment at the place or places of business. Thus, if any person resident in the municipality have no place of business, he shall be assessed at his place of residence. The word "residence" in different statutes may have different meanings, according to the subject matter and purpose of the statutes. Where the lessees of a road running through the village of St. Thomas, lived in the township of Yarmouth, it was held that they could not be assessed in St. Thomas for their interest in the road. *In re Hepburn and Johnston*, 7 U. C. L. J. 46. So where the appellant, though in the village of St. Thomas at the time of the assessment, was only temporarily there for the purpose of winding up the business of an agency of the Bank of Montreal at that place, it was held that he could not be taxed on his income in St. Thomas. *In re Ashworth*, 7 U. C. L. J. 47. So where a resident of Vienna, had taken a house at Ingersoll, in another municipality, whither the greater part of his household effects had been removed, and most of his family resided at the time of the assessment, although he temporarily remained and slept in his former domicile during the night, it was held that he could not be legally assessed in Vienna. *Marr* v. *Vienna*, 10 U. C. L. J. 275. See also note *w* to sec. 17.

(*g*) See preceding note, and note *d* to sec. 36.

residents may be assessed against the agent therefor.

any agent, trustee or other person who is in the control or possession thereof, and shall be deemed to be the individual property of such agent, trustee or other person, for all objects within this Act. (*y*) R. S. O. 1877, c. 180, s. 34.

Separate assessment of joint owners.

40. In case of personal property, owned or possessed by or under the control of more than one person resident (*a*) in the municipality or ward, each shall be assessed for his share only, or if they hold in a representative character, (*b*) then each shall be assessed for an equal portion only. (*c*) R. S. O. 1877, c. 180, s. 35.

Case of executors, etc.

41—(1) Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor or administrator, shall be assessed against such person alone. (*d*)

(*y*) See note *d* to sec. 41.

(*a*) *Resident*, &c. See note *f* to sec. 37.

(*b*) See note *d* to sec. 41.

(*c*) This apparently intends that the assessment should be separate as to each ; each to be assessed for an equal portion *only*. See note *d*, *infra*. If all were jointly assessed, then each would be severally as well as jointly liable for the whole amount of the assessment. But where each is only assessed "for a portion," each must be discharged on payment for the taxes for *that* portion.

(*d*) Trustees, guardians, executors and administrators are supposed to have the means of reimbursing themselves out of the estate moneys paid for taxes. Though described on the roll in their representative capacity it would seem that they are personally liable for the payment of taxes. "It may, no doubt, operate hardly, but not more so than the seizure of any other person's goods which may happen to be in the possession of the person assessed." *Per* Robinson, C. J., in *Dennison* v. *Henry*, 17 U. C. Q. B. 276. So a person appearing upon the books of a bank as the legal holder of its shares is, upon the failure of the bank, held liable for the debts of the bank, to the extent of the shares held by him, although he received and holds the shares as collateral security for a loan to a shareholder or otherwise in trust. See *Creasc* v. *Babcock*, 10 Met. (Mass.) 525 ; *Grew* v. *Breed*, 10 Met. (Mass.) 569 ; *Adderly* v. *Storm*, 6 Hill. (N.Y.) 624 : *Rosevelt* v. *Brown*, 11 N. Y. 148 ; *Re Empire City Banks*, 18 N. Y. 199 ; *Hale* v. *Walker*, 31 Iowa 344 ; 7 Am. 137. Personal property of a person not resident within the Province must be assessed in the name of and against any agent, trustee or other person who is in the control or possession thereof, and is to be deemed the property of such trustee, agent or other person for all objects within the Assessment Act. See s. 39. In *The People* v. *Gardner*, 51 Barb. (N.Y.) 352, it was held that a resident of New York was not liable to be assessed there for capital invested in other States upon securities taken and held there

(2) Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, (e) with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment, (f) and he shall be assessed for the value of the real and personal estate held by him, whether in his individual name, or in conjunction with others in such representative character, at the full value thereof, or for the proper proportion thereof, if others resident within the same municipality are joined with him in such representative character. (g) R. S. O. 1877, c. 180, s. 36.

Parties assessed as trustees, etc., to have their representative character attached to their names.

General Provisions.

42—(1) It shall be the duty of every person assessable for real or personal property in any local municipality, to give all necessary information to the assessors, and if required by the assessor, or by one of the assessors, if there is more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself is absent) containing:

Particulars respecting property to be furnished to assessors by parties who are assessable.

(a) All the particulars respecting the real or personal property assessable against such person which are required in the assessment roll; (i)

and if any reasonable doubt is entertained by the assessor of the correctness of any information given by the party applied

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by her agents. In *Catlin* v. *Hull*, 21 Vt. 152, it was held that where notes were left by a resident of the State of New York in the State of Vermont in the hands of the agent for management, collection, and investment that they might be properly assessed in Vermont. But in *Hunter* v. *Board of Supervisors*, 11 Am. 132, it was held that where a resident of Iowa had deposited for safe keeping in Illinois promissory notes collected by himself in Iowa, they were liable to assessment in Iowa.

(e) See preceding note.

(f) An administrator, though assessed in his own name for real property belonging to the estate, cannot qualify upon it as a member of the council. *Reg. ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128.

(g) It is quite plain that there ought to be no confusion between the assessment of property belonging to a man in his own right, and that which he holds in a representative capacity. When holding property in the latter capacity, he is to be assessed as such *and* the assessment is to be carried out separate from his individual assessment. So if others resident within the municipality be joined with him in such representative character.

to, the assessor shall require from him such written statement. 48 V. c. 42, s. 5 part; 51 V. c. 29, s. 11 (2).

[*Clause* (b) *of this sub-section and the remaining sub-sections of this section were repealed by 51 V., c. 29, s. 11 (2)*]

Statement to be furnished to assessor.

43. Every corporation whose dividends are liable to taxation as against the shareholders, shall, at the written request of the assessor of any municipality in which there is or are any person or persons liable to be assessed for income derived from stock in such corporation (such written request to be communicated by delivering the same to the principal officer of the corporation in this Province, or by leaving the same at the principal office in the Province, or to be made by registered letter, prepaid, addressed to the corporation at the place of such principal office) and within thirty days after the delivery, leaving or posting of such written request, deliver to such assessor, or send to him in a registered letter, prepaid, a statement in writing setting forth the names of the shareholders who are resident in such municipality, or who ought to be assessed for their income by such municipality, the amount of stock held by every such person on the day named for that purpose by the assessor in his said written request and the amount of dividends and bonuses declared during the twelve months next preceding; which statement in writing to be so furnished to the assessor shall contain also a certificate under the hand of the principal officer of the corporation in the Province, declaring that the same contains, to the best of the knowledge and belief of such officer, a correct list of such shareholders, and of the amount of stock held by each on the day so named by the assessor, so far as appears from the books of the corporation or so far as is known otherwise by such officer. 43 V. c. 27, s. 15, *part.*

Statements given by parties not binding on assessors.

44. No such statement shall bind the assessor, or excuse him from making due enquiry to ascertain its correctness; and, notwithstanding the statement, the assessor may assess such person for such amount of real or personal property as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the assessor has reason to believe that he is not entitled to be placed on the roll or to be assessed for such property. (*h*) R. S. O. 1877, c. 180, s. 38.

(*h*) The assessor is to make such an assessment as he believes to be just and correct. Some men, owning assessable property, may desire

Penalty for not giving statement or making false statement.

45.—(1) In case any person fails to deliver to the assessor the written statement mentioned in the preceding three sections when required to do so, or knowingly states anything falsely in the written statement required to be made as aforesaid, (*i*) such person shall, on complaint of the assessor, and upon conviction before a Justice of the Peace having jurisdiction within the county wherein the municipality is situate, forfeit and pay a fine, to be recovered in like manner as other penalties upon summary conviction before a Justice of the Peace.

(2) The fine for default shall be under section 42 or 44, $20; and under section 43, $100. R. S. O., 1877, c. 180, s. 39; 43 V. c. 27, s. 15, *part*.

Assessor to make inquiries so as to prevent creation of false votes.

46. To prevent the creation of false votes, where any person

(*a*) Claims to be assessed, or claims that any other person should be assessed, as owner, tenant or occupant of any parcel of land, or as a householder, or as possessing the income which entitles him to vote in any municipality at any election; or

(*b*) Claims to be entered or that any other person should be entered in the assessment roll of the municipality as a farmer's son within the meaning of *The Municipal Act*;

And the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed or entered, it shall be the duty of the assessor to make reasonable enquiries before so assessing or

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to be assessed at too small a sum, in order to escape taxation. Others, having property, but not of sufficient value to qualify them either as councillors or voters, may desire to be assessed at too large an amount, in order either to be a candidate for office or a duly qualified voter. Others, having no assessable property of any kind, may, for either of the purposes last mentioned, desire to be assessed for property when they ought not to be assessed at all. It is the duty of the assessor to be astute in preventing erroneous assessments, from whatever cause designed.

(*i*) The written statement is only to be delivered when required by the assessor. If he have reasonable doubt as to the correctness of verbal information given to him, it is his duty to require the written statement. The written statement is intended to be acted upon by the assessor, and may mislead him, to the advantage of the person giving it. Hence the imposition of a penalty for the giving of a *knowingly* false statement.

entering any such person. (*j*) 48 V. c. 42, s. 9 ; 51 V. c. 29, s. 11 (4).

Assessor to give notice to parties of the value at which their property assessed.

47—(1) Every assessor, before the completion of his roll, shall leave for every party named thereon, resident or domiciled, or having a place of business within the municipality, and shall transmit by post to every non-resident who has required his name to be entered thereon, and furnished his address to the clerk, a notice of the sum at which his real and personal property has been assessed, according to the form of Schedule B., annexed to this Act, (*k*) and shall enter on the roll opposite the name of the party, the time of delivering or transmitting such notice, which entry shall be *prima facie*

(*j*) The proper discharge of the duties of the assessor are of the greatest possible importance to the true working of the municipal machinery. The duty here cast upon the assessor is imperative. Whenever the assessor has reason to suspect that the person claiming the vote, or for whom the claim is made, has not a just right to be so assessed, it is his duty to make reasonable enquiries before assessing the person. The neglect of the assessor to perform this or any other duty cast upon him, subjects him to a penalty. See sec. 225. Upon a prosecution for the penalty there will be two enquiries—1. Whether the assessor had reason to suspect. 2. Whether, having reason to suspect, he made reasonable enquiries before assessing. In order to subject the assessor to the penalty it is not necessary to prove that he acted from any corrupt motive. See *Tarr* v. *McGahey*, 7 C. & P. 380. When an assessor has reasonable notice before he returns the roll that a change in occupancy has been made, and omits to make the necessary changes on the roll it may be probably considered that he has wrongfully refused to insert the proper name on the roll. *Per* Richards, C. J., *In re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 452.

(*k*) The object of this notice is to enable the person for whom intended, if dissatisfied with the sum at which his real and personal property has been assessed, to appeal therefrom. Considered in this light it is of great importance that it should be left or transmitted by post (as the case may be,) according to the direction of the statute. If neglected, it would seem that the municipal corporation would not be in a position to enforce payment of the taxes, either by distress or action. *London* v. *Great Western R. W. Co.*, 16 U. C. Q. B. 500. In *Nicholls* v. *Cumming*, 25 U. C. C. P. 169, the plaintiffs were served by the assessors with a notice in the form prescribed to the effect that they were assessed for 1874 at the sum of $29,900 and without any further or other notice being served on them they were entered on the assessment roll as finally revised by the Court of Revision for $43,400, the Court of Common Pleas held that they were not liable to be taxed on the last named sum. This decision was reversed by the Court of Appeal, 26 U. C. C. P. 323, but the latter decision was in its turn reversed by the Supreme Court of Canada. *Ib.* 395.

evidence of such delivery or transmission. R. S. O. 1877, c. 180, s. 41.

[*Sub-section 2 of this section and section 48 are repealed by 51 V. c. 29, s. 11 (2).*]

When assessment roll to be completed.

49. Subject to the provisions of sections 52 and 54, every assessor shall begin to make his roll in each year not later than the 15th day of February, and shall complete the same on or before the 30th day of April, (*l*) and shall attach thereto a certificate signed by him, and verified upon oath or affirmation in the form following : (*m*)

" I do hereby certify that I have set down in the above assessment roll all the real properly liable to taxation situate in the municipality (*or* ward) of (*as the case may be*) and the true actual value thereof in each case, according to the best of my information and judgment ; and also that the said assessment roll contains a true statement of the aggregate amount of the personal property, or of the taxable income, of every party named on the said roll ; and that I have estimated and set down the same according to the best of my infor-

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(*l*) In each year every assessor must begin to make his roll not later than the fifteenth day of February, and must complete the same on or before the thirtieth day of April, and on the first day of May, must deliver the completed roll, to the clerk of the municipality, with the certificates and affidavits required by law attached. (Sec. 50.) The duty, so far as the assessors are concerned, to make and complete the rolls by the days fixed for the purpose, is imperative. See note *g* to sec. 248 of the Municipal Act. If an assessor delay to return his roll for several days after the time fixed, he is liable if the delay be the result of *wilful* omission—1. To a *fine* not exceeding $200, and to imprisonment until the fine be paid, in the common goal for a period not exceeding six months. 2. Or, to *both* fine and imprisonment, in the discretion of the Court. See sec. 227. But if the delay be the result of *other* than wilful omission, still the assessor is liable to forfeit such sum as the Court shall order and adjudge not exceeding $100. See sec. 225.

But the non-return of the roll by the day named does not invalidate the assessment. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126 ; *Reg.* v. *Ingall*, 2 Q. B. D. 199. See further note *g* to sec. 248 of the Municipal Act. If there be a change of occupancy, and the assessor have notice of it, he may before the return of the roll make a corresponding alteration on the roll. *In re McCulloch and the County Judge of Leeds and Grenville*, 35 U. C. Q. B. 449.

(*m*) The duty of assessors is not only to return the roll by the time limited for the purpose, but before doing so, to attach thereto a certificate signed by them respectively, *and* verified upon oath or affirmation in the form given. See note *r* to sec. 330 of the Municipal Act. The omission of the certificate does not invalidate the assessment. See note *b* to sec. 20.

mation and belief; and I further certify, that I have entered thereon the names of all the resident householders, tenants and freeholders, and of all other persons who have required their names to be entered thereon, with the true amount of property occupied or owned, or of income received by each, and that I have not entered the names of any persons whom I do not truly believe to be a householder, tenant or freeholder, or the *bona fide* occupier or owner of the property, or in receipt of the income set down opposite his name, for his own use and benefit; and I further certify that according to the best of my knowledge and belief, I have entered thereon the name of every person entitled to be so entered either under *The Assessment Act* or *The Manhood Suffrage Act* (*t*) or of any Act amending either of the said Acts and that I have not intentionally omitted from said roll the name of any person whom I knew or had good reason to believe was or is entitled to be entered thereon under any or either of the said Acts; and I further certify that the date of delivery or transmitting the notice, required by section 47 of *The Assessment Act* is in every case truly and correctly stated in the said roll; and I further certify and swear (*or* affirm, *as the case may be*) that I have not entered the name of any person at too low a rate in order to deprive such person of a vote, or at too high a rate in order to give such person a vote; and that the amount for which each such person is assessed upon the said roll truly and correctly appears in the said notice delivered or transmitted to him as aforesaid."

R. S. O. 1877, c. 180, s. 42; 51 V. c. 29, s. 11, (5).

Assessment rolls to be delivered to clerks of municipalities, etc.

50. Every assessor shall, on or before the 1st day of May, deliver to the clerk of the municipality such assessment roll, completed and added up, with the certificates and affidavits attached; and the clerk shall immediately, upon the receipt of the roll, file the same in his office, and the same shall, at all convenient office hours, be open to the inspection of all the householders, tenants, freeholders and income voters resident, owning or in possession of property, or in

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(*t*) *The Manhood Suffrage Act* (51 V. c. 4, s. 12) enacts:—"The assessor shall, at the foot of his assessment roll, after he has completed the same, make affidavit before a Justice of the Peace in the words, or to the effect following:—

'I have not entered any name in the above roll, or improperly placed any letter or letters in column 4 opposite any name, with intent to give to any person not entitled to vote, a right of voting.'

'I have not intentionally omitted from the said roll the name of any person whom I believe entitled to be placed thereon, nor have I, in order to deprive any person of a right of voting, omitted from column 4 opposite the name of such person any letter or letters which I ought to have placed there.'"

receipt of incomes in the municipality. (*n*) R. S. O. 1877, c. 180, s. 43.

Penalty for causing improper entries on roll.

51. Any person who wilfully and improperly inserts or procures or causes the insertion of any name in the assessment roll, or assesses or procures or causes the assessment of any person at too high an amount, with intent in either or any such case to give to any person not entitled thereto an apparent right to vote at any election; or who wilfully inserts, or procures or causes the insertion of any fictitious name in the assessment roll, or who wilfully and improperly omits, or procures or causes the omission, of any name from the assessment roll, or assesses, or procures or causes the assessment of, any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment in the common gaol of the county or city for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. 48 V. c. 42, s. 11.

Special provisions relating to Counties, Cities, Towns, and Villages.

Time for taking the assessment and revising the rolls in cities, etc.

52. In cities, towns and incorporated villages, the council, instead of being bound by the periods above mentioned for taking the assessment, and by the periods named for the revision of the rolls by the Court of Revision, and by the County Judge, may pass by-laws for regulating the above

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(*n*) One object of the delivery of the roll to the clerk, so far as this section is concerned, is that the same may be filed and open to the inspection of all the householders and freeholders resident or owning property in the municipality. See *Rex* v. *Arnold*, 4 A. & E. 657; *Reg.* v. *Blagge*, 10 Jur. 983. This is in order to enable the persons designated, to examine the roll, and if not found correct to appeal against the same in the manner directed and within the time limited for the purpose. Sec. 64. The Court or a Judge no doubt would, on a proper application, grant a *mandamus* to any householder, tenant or freeholder resident, owning or in possession of property in the municipality, who, at a proper time and in a proper manner demanded inspection of the clerk, but was refused. See *Rex* v. *Newcastle-upon-Tyne*, 2 Stra. 1223; *Rex* v. *Babb*, 3 T. R. 579; *Rex* v. *Shelly*, *Ib.* 141; *Rex* v. *Lucas*, 10 East. 235; *Rex* v. *Tower*, 4 M. & S. 162; *Rex* v. *Arnold*, 4 A. & E. 657; see also, *Tapping on Mandamus*, 52, 95.

periods, as follows, that is to say:—For taking the assessment between the 1st day of July and the 30th day of September, the rolls being returnable in such case to the city, town or village clerk on the 1st day of October; and, in such case, the time for closing the Court of Revision shall be the 15th day of November, and for final return by the Judge of the County Court the 31st day of December; and the assessment so made and concluded may be adopted by the council of the following year as the assessment on which the rate of taxation for said following year shall be levied, and in the year following the passing of the by-law, the council may adopt the assessment of the preceding year as the basis of the assessment of that year. R. S. O. 1877, c. 180, s. 44; 49 V. c. 38, s. 7.

Payment of taxes by instalments.

53—(1) In cities, towns, townships, or incorporated villages the council may by a by-law, or by-laws, require the payment of taxes and of all local improvement assessments, including sewer rents and rates, to be made into the office of the treasurer or collector by any day or days to be named therein, in bulk or by instalments, and may by such by-law, or by-laws, allow a discount for the prompt payment of such taxes, assessments, rents or rates, or any instalment thereof, on or before the day or days on which the same shall be made payable. (*o*) 49 V. c. 38, s. 8; 50 V. c. 32, s. 3.

(2) The council may by by-law or by-laws impose an additional percentage charge not exceeding five per cent. on every tax or assessment, rent, or rate, or instalment thereof, whether the same be payable in bulk or instalments, which shall not be paid on the day appointed for the payment thereof, and in towns, villages, or townships, where no day shall have been appointed for payment, the council may by by-law or by-laws impose such percentage on those which shall not have been paid on or before the 14th day of December in each year, there having been fourteen days previous demand as hereinafter provided, and such additional percentage shall be added to such unpaid tax or assessment, rent or rate, or instalment thereof, and be collected by the collector or otherwise, as if

(*o*) This, if fairly carried out, will be found a convenience to the taxpayer. The prompt payment of the instalments may be made a condition precedent to the enjoyment of the privilege intended to be conferred. The latter part of this section as it appears in the revised statutes was repealed by 51 Viet. c. 29, s. 5, and a sub-section added which deals with the subject to which the repealed part related.

the same had originally been imposed and formed part of such unpaid tax or assessment, rent or rate or instalment thereof. 51 V. c. 29, s. 5.

County Council may pass by-laws for regulating the taking of assessment, etc.

54—(1) County councils may pass by-laws for taking the assessment in towns, townships, and incorporated villages, between the 1st day of February and the 1st day of July.

(2) If such by-law extends the time for making and completing the assessment rolls beyond the first day of May, then the time for closing the Court of Revision shall be six weeks from the day to which such time is extended, and for final return, in case of an appeal, twelve weeks from that day. (*p*) R. S. O. 1877, c. 180, s. 46.

COURT OF REVISION.

When council consists

55. If the council of the municipality (*q*) consists of not

(*p*) See note *l* to sec. 49.

(*q*) This section makes provision for a Court of Revision, so called because it is its duty, on proper application, to revise the assessment rolls in each local municipality. If the council consists of not more than five members, *such* members shall be the Court of Revision. If of more than five members, then, by the next section, the council is to appoint five of its members to be the Court of Revision. The Court of Revision is the creature of the statute constituting it and its jurisdiction is limited to the exercise of the powers expressly given to it by the statute. Its function is judicial, and is by sec. 61, to "try all complaints in regard to persons wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum." Such complaints are only of any person complaining of an error or omission in regard to himself, etc. Sec. 64 (1); of a municipal elector thinking that any person has been assessed too low or too high, etc. Sec. 64 (3); and of the assessor where it appears that there are palpable errors which need correction. Sec. 64 (18). *Tobey* v. *Wilson*, 43 U. C. Q. B. 230, 234. The roll as finally passed by the Court is, except as to cases appealed, and for which special provision is made (sec. 68 *et seq.*) to be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to the roll. Sec. 65. It is only, however, to be so held as to matters within the jurisdiction of the Court. If the subject matter of complaint be within the jurisdiction of the Court, the party concerned must appeal to the Court, and has no other remedy. See *Milward* v. *Coffin*, 2 W. Bl. 1330; *Scragg* v. *London*, 26 U. C. Q. B. 263; *Niagara Fall Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194; *Canadian Land and Emigration Co.* v. *Municipality of Dysart*, 12 A. R. 80; *London Mutual Fire Ins. Co.* v. *City of London*, 11 O. R. 592; *Barton* v. *Piggot*, L. R. 10 Q. B. 86; *Wilson* v. *Weller*, 1 B. & B. 57; *Rex.* v. *Hulcott*, 6 T. R. 583; *Commonwealth* v. *Leech*, 44 Pa. St. 332; *In re Canal and Walker Streets*, 12 N. Y. 406; *Reg.* v.

of five members only.

more than five members, such five members shall be the Court

Mayor of Bridgewater, 6 A. & E. 339; *Ex parte Lee*, 7 A. & E. 139; *Reg.* v. *Poole*, *Ib.* 738; *Reg.* v. *Mayor of Norwich*, 8 A. & E. 633; *Reg.* v. *Lords of the Treasury*, 10 A. & E. 374; *Allen* v. *Sharpe*, 2 Ex. 352; *Reg.* v. *Mayor of Norwich*, 3 Q. B. 285: *Churchwardens of Birmingham* v. *Shaw*, 10 Q. B. 868; *Pedley* v. *Davis*, 10 C. B. N. S. 492. The Stat. 43 Eliz. cap. 2. sec. 1, enabled the overseers of every parish to raise, weekly or otherwise, by taxation of every *inhabitant*, &c., and of every *occupier* of lands, &c., competent sums of money for and towards the necessary relief of the lame, impotent, old, &c. By sec. 6 an appeal was given to the Court of Sessions in these words: "That if any person or persons shall find themselves grieved *with any sess or tax or other* act done by the said Churchwardens, &c., that then it shall be lawful for the Justices of the Peace, at their General Quarter Sessions, &c., to take order therein as to them shall be thought convenient, and the same to conclude and bind all the parties." In *Milward* v. *Coffin*, 2 W. Bl. 1330, the Court said that all that related to the assessment of land *not* in the occupation of the plaintiff was *coram non judice*, and the determination of the Justices a nullity. This case was upheld in *Fletcher* v. *Wilkins*, 6 East. 285, 286, and *Hurrell* v. *Wink*, 8 Taunt. 369; *Reg.* v. *Welbank*, 4 M. & S. 222. In *Marshall* v. *Pitman*, 9 Bing. 595, the Court said that if the person aggrieved were an *inhabitant* possessing visible property, he was liable to be placed on the rate, although his ratable property turn out afterwards to amount to nothing; and that his only remedy in such case was an appeal to the Justices. The contrary is the rule if the subject matter of the complaint be one over which the Court has no jurisdiction. See *Groenvelt* v. *Burwell*, 1 Ld. Rayd. 471; *Weaver* v. *Price*, 3 B. & Ad. 409; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264; *Charleton* v. *Alway*, 11 A. & E. 993; *Reg.* v. *Mayor, &c., of Newbury*, 1 Q. B. 751; *Reg.* v. *Mayor, &c., of Sandwich*, 2 Q. B. 895; 10 Q. B. 563; *Reg.* v. *Mayor, &c., of Harwich*, 2 Q. B. 909; *Reg.* v. *St. George, Southwark*, 10 Q. B. 852; *Reg.* v. *Mayor, &c., of Lichfield*, 16 Q. B. 781; *Reg.* v. *Glamorganshire Canal Co.*, 3 E. & E. 186; *Mersey Docks* v. *Cameron*, 11 H. L. C. 443; *Commissioners of Leith Harbour and Dock* v. *Inspectors of the Poor*, L. R. 1 H. L. Sc. 17; *Reg.* v. *St. Martin's Leicester*, L. R. 2 Q. B. 493; *Great Western R. W. Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 262; *Shaw* v. *Shaw*, 21 U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456. By 43 Geo. III. cap. 99, the laws relating to the duties under the management of the commissioners for the affairs of taxes were consolidated. It provided for the appointment of assessors, and by sec. 24 gave an appeal to any person who should think himself "*overcharged* or *overrated* by any assessment or surcharge," &c.; but by secs. 69 and 70 of 43 Geo. III., c. 161, the right of appeal was extended to "*any assessment.*" This was held to include the case of a person claiming exemption and otherwise wrongly assessed. *Allan* v. *Sharpe*, 2 Ex. 352; see further, *Pedley* v. *Davis*, 10 C. B. N. S. 492. The words used as to the jurisdiction of Courts of Revision in this Act are substantially the same as used in 16 Vict. c. 182, ss. 26-28. The question was raised at a very early period as to whether persons claiming to be exempt from assessment, or whose assess-

of Revision for the municipality. R. S. O. 1877, c. 180, s. 47.

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ment was otherwise illegal, were bound to appeal to the Courts of Revision; in other words, whether the Courts of Revision had jurisdiction to try such a subject matter of complaint. In *Great Western R. W. Co.* v. *Rouse*, 15 U. C. Q. B. 168, Sir J. B. Robinson said: "The 26th and 28th clauses of cap. 182 (16 Vict.) only make the decision of the Judge of the Court final in regard to such matters as are to be submitted to him—that is, any alleged overcharge or undercharge, or the wrongful insertion of any person's name;" and held that as the superstructure of a Railway Company was exempt from taxation, the assessment of superstructure was illegal, and neither the Court of Revision nor County Judge had power to adjudicate on such a question. There was no complaint in this case that the name of the Company was "wrongfully inserted on the roll." The complaint was that it was inserted on the roll for property that was exempt from taxation, and the Court held that this was not a case of overcharge within the meaning of the Act. In *London* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 262, Sir J. B. Robinson, referring to *Milward* v. *Coffin*, 2 W. Bl. 1330, and *Charlton* v. *Allway*, 11 A. & E. 993, said that "when that has been assessed which could not be legally assessed, the objection becomes a very different one as to its consequences from that of *a mere over valuation*;" and Burns, J., referring to *Milward* v. *Coffin*, 2 W. Bl. 1330; *Marshall* v. *Pitman*, 9 Bing. 595; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264, was more explicit, and said, "The distinction where it is necessary to appeal, and where the claim may be resisted by action of trespass or replevin, is this: if the power existed *to make the assessment*, then there is a jurisdiction in those doing it, and in *such case* the remedy is by appeal *only*. But if the assessment be *illegal*, then there is no jurisdiction to do it, and in *such case* the person resisting is not compelled to resort to the remedy of appeal, but may resist the illegal exaction. . . . . If people were obliged to submit to an arbitrary mode of making the assessment, and so compelled to go to the Court of Revision for redress rather than take the opinion of the Law Courts on the illegal act of the Assessor, it might lead to great inconvenience and hardship, besides holding the door open to injustice being perpetrated by the Assessors; and as the rolls are revised by a Court of Revision formed from members of the Council, they should not adopt an illegal assessment. . . . . I do not think the assessor could drive the defendants to the Court of Revision as a matter of necessity by calling that *land* which was *not land*." In *Shaw* v. *Shaw*, 21 U. C. Q. B. 432, 437, Sir J. B. Robinson said, "If the property was exempt from assessment by statute, there was no necessity for going to the Court of Revision in order to have their decision on the point, as the cases of *Milward* v. *Coffin*, 2 W. Bl. 1330, and *Charleton* v. *Allway*, 11 A. & E. 993, fully establish." In *Shaw* v. *Shaw*, 12 U. C. C. P. 456, 459, Morrison, J., said, "The property in question (property in the occupation of the Crown) not being taxable property, was wrongly inserted on the roll, and being specifically exempt by the statute from taxation, the unauthorized assessment of it could not render it liable to taxation, or *give jurisdiction to the Court of Revision*. It was a mere nullity, &c. . . .

When of more than five.

56. If the council consists of more than five members,

There is nothing in the statute to show, or which can be construed as showing, that property so exempt should become liable to taxation from the fact of the assessor assessing the property or inserting it on the roll." Up to this point both the Common Law Courts held that property exempt from taxation could not be taxed, and that neither the Court of Revision nor the County Judge had power under the words used in the Act to adjudicate on such a question. But in *Toronto* v. *Great Western R. W. Co.*, 25 U. C. Q. B. 570, where the question sought to be brought before the Court was as to the effect of the Court of Revision and County Judge upholding an assessment of the superstructure of a railway, which by law is exempt from taxation, Draper, C. J., said, "As to the question itself, as at present advised, we do not think it would be found to present any great difficulty. If the assessors had put the two annual values (the roadway and superstructure were separately assessed) as forming the whole valuation of the land, though there *might* have been an appeal to the County Judge on the question of *excessive valuation*, and he must have confirmed or reduced it, we do not see how under the statute, his decision could have been brought in question." This was certainly so far as the case can be taken as a decision of any kind, a decision at variance with *London* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 262, and the cases following it, including *Shaw* v. *Shaw*, 12 U. C. C. P. 458. Mr. Justice Morrison, who delivered the judgment of the Court of Common Pleas in *Shaw* v. *Shaw*, was a member of the Queen's Bench when *Toronto* v. *Great Western R. W. Co.*, was decided, but was absent, and so took no part in the judgment. This case was in *Scragg* v. *London*, 26 U. C. Q. B. 263, treated as a decision overruling all the prior cases. One of the questions raised in *Scragg* v. *London*, was, whether the decision of the Court of Revision (on a claim of exemption from taxation) was final—no appeal having been lodged to the County Judge. Hagarty, J., who delivered the judgment of the Court, after a review of most of the cases, and quoting section 60 of the then statute (corresponding with sec. 64 of this Act), said: "It is perhaps not easy to see how these words do not cover the whole ground—namely, the wrongful *insertion of a name and undercharge* or *overcharge*. The man who has nothing but property not assessable is *wrongfully on the roll*. According to these decisions *London* v. *Great Western R. W. Co.*, he need not appeal or if he do, is not bound by the judgment of the Court of Revision or County Judge. We think on the whole, we should follow the latest decision of this Court, (*Toronto* v. *Great Western R. W. Co.*, 25 U. C. Q. B. 570,) *as it accords with our individual views*," &c. Draper, C. J., concurred. Morrison, J. who delivered a judgment in the case on another point, apparently abstained from in any manner referring to the point. *Scragg* v. *London* was appealed to the Court of Appeal, but judgment was given on other grounds and did not touch this point. *Scragg* v. *London*, 28 U. C. Q. B. 459. But in *Nickle* v. *Douglas*, 37 U. C. Q. B. 51, the point was before the Court of Appeal and that Court upheld the earlier decisions holding that where there was no jurisdiction to make the assessment the decision of the Court of Revision is not binding on the person erroneously assessed. See further *Lewis* v. *Gray*, 1 C. P. D. 452, and note *q* to *s.* 57.

such council shall appoint five of its members to be the Court of Revision. R. S. O. 1877, c. 180, s. 48.

Oath of members of Court of Revision.

57. Every member of the Court of Revision, before entering upon his duties, shall take and subscribe, before the clerk of the municipality, the following oath (or affirmation in cases where by law affirmation is allowed):—

"I , do solemnly swear (*or* affirm) that I will, to the best of my judgment and ability, and without fear, favour or partiality, honestly decide the appeals to the Court of Revision which may be brought before me for trial as a member of said Court."

R. S. O. 1877, c. 180, s. 49.

Quorum.

58. Three members of the Court of Revision shall be a quorum; and a majority of a quorum may decide all questions before the Court. (*r*) R. S. O. 1877, c. 180, s. 50.

Who to be clerk.

59. The clerk of the municipality shall be clerk of the Court, and shall record the proceedings thereof. (*s*) R. S. O. 1877, c. 180, s. 51.

Meetings of Court.

60. The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the head of the municipality; but the first sitting of the Court of Revision shall not be held until after the expiration of at least ten days from the expiration of the time within which notice of appeals may be given to the clerk of the municipality. (*t*) R. S. O. 1877, c. 180, s. 52.

Court to try all complaints, etc.

61. At the times or time appointed, the Court (*u*) shall meet and try all complaints in regard to persons wrongfully

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(*r*) *Quorum.* See note *n* to sec 225 of the Municipal Act.

(*s*) See sec. 245 of the Municipal Act, and notes thereto.

(*t*) At least ten days from, &c. See *Tobey* v. *Wilson*, 43 U. C. Q. B. 230. See further note *c* to sec. 115 of the Municipal Act.

(*u*) This section declares the jurisdiction of the Court. It is not only to try all complaints of persons "assessed at too high or too low a sum," but all complaints of persons "*wrongfully* placed upon or omitted from the Roll." See note *q* to s. 55, and note *q* to s. 65. The person who gives a notice of his intention to appeal is not bound to follow it up. Should he, before the day for the trial, abandon his notice the appeal would drop. In *Reg.* v. *Stoke Bliss*, 6 Q. B. 158, on an appeal from an order of justices to the Sessions, the appellant served a notice of countermand, but the Court, notwithstanding, made an order confirming the order of the Justices, with costs. It

placed upon or omitted from the roll, or assessed at too high or too low a sum. R. S. O. 1877, c. 180, s. 53.

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was held that the Court had no jurisdiction to do so. By this statute it is declared that "if *either* party fails to appear either in person or by an agent, the court *may* proceed *ex parte*." Sub-s. 17 of sec. 64. If the appellant appear to prosecute his appeal, and show himself to be in a position to do so, it is the duty of the Court to try it. But the court, before proceeding *ex parte* against the persons to whom the notice was given must be satisfied that due notice—that is to say, at least six days' notice—had been given to such parties. *Per* Morrison, J., in *Reg.* v. *Cornwall*, 25 U. C. Q. B. 292. The appearance of the parties by their counsel for the purpose of objecting to the notice is no waiver of it. *Ib.* In the event of the Court refusing to hear a complaint when it ought to do so, a *mandamus* might be obtained to compel them to do so. *Rex* v. *Justices of Kent*, 9 B. & C. 283. "In this case a rate was made and a sum of money ordered to be paid out of that rate to Suter. Ritchie (the appellant) objected to such payment, and applied for relief under the sixty-third section to the churchwardens, &c. They resolved that they would take no notice of his application for relief. They refused, in fact, to hear the appeal at all. The proper course under these circumstances would have been to have applied to this Court for a *mandamus* to compel them to hear this appeal." *Per* Lord Tenterden, C. J., *Ib.* 287. It is the duty of the Court, when a person appeals against an assessment, and appears to support his appeal, to decide the complaint either one way or the other. *Law Society of Upper Canada* v. *Toronto*, 25 U. C. Q. B. 199. Abstaining from decision is no determination of the matter of appeal. *Ib.* See also *Reg.* v. *Guardians of Biggleswade Union*, 21 L. T. N. S. 494. *Reg.* v. *Bedminster Union*, 1 Q. B. D. 503. The person appealing is entitled to a decision on his appeal before he can be made liable to pay any taxes in respect of the assessment against which he appeals. Until decided, the assessment is, as it were, withdrawn from the assessment roll. *Law Society of Upper Canada* v. *Toronto*, 25 U. C. Q. B. 207; *per* Morrison, J. Some *act* of the Court would, it seems be necessary before a decision could be said to be given. *Ib.* In *In re Judge of Perth and J. L. Robinson*, 12 U. C. C. P. 252, where on an application claiming a reduction of assessment, the Court of Revision adopted a resolution "That the application of James Lukin Robinson for a reduction of his taxes on the assessment be dismissed, as this council is of opinion that the lands of complainant have not been assessed higher in any case than lands similarly situated of residents of the municipality," it was held that this resolution was a sufficient act done to amount to a decision. And *per* Draper, C. J.: "I think it would amount to an entire defeating of the statute, and a denial of the relief it was intended to afford, if, by refusing to entertain the petition altogether, they could prevent the complaint being heard. As at present advised, I should treat *such* a refusal as a decision against the petitioner. In substance it is certainly so, only it may be said to be a decision without trying the case. In the present instance, the council have, I think, by the very terms of their resolution, shewn that they have tried the matter, though they have done so without hearing the complainant further than by reading the statements of his petition. They have dismissed the petition 'be-

May administer oaths, etc.

62. The Court, or some member thereof, may administer an oath to any party or witness, before his evidence is taken, and may issue a summons to any witness to attend such Court. (*v*) R. S. O. 1877, c. 180, s. 54. *See* sec. 64 (16).

Penalty on witnesses for non-attendance.

63. If a persons ummoned to attend the Court of Revision as a witness fails, without good and sufficient reason, to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty of $20, to be recoverable, with costs, by and to the use of any person suing for the same, either by suit in the proper Division Court, or in any way in which penalties incurred under any by-law of the municipality may be recovered. R. S. O. 1877, c. 180, s. 55.

Proceeding for the Trial of Complaints.

Notice of complaint by party aggrieved.

64—(1) Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the assessor in the roll, may personally or by his agent give notice in writing to the clerk of the municipality, (or assessment commissioner, if any there be), that he considers himself aggrieved for any or all of the causes aforesaid. (*w*)

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cause his lands have not been assessed higher in any case than lands similarly situated of residents of the municipality.' This is really a decision of the complaint, and imports an examination *into the merits*. They profess to have ascertained a fact which in their judgment, disentitles the applicant to relief under the Act. *Ib.* 252. In *Rex* v. *Tucker*, 3 B. & C. 544, the dismissal of a complaint, on the mistaken ground that the court had not jurisdiction to hear it, was, under the peculiar provisions of 3 Geo. IV. c. 33, s. 2, considered such an act done by the court as to give a right to appeal. And *per* Abbot, C. J. : "The application must be made within a certain time, notices are to be given, and the Petty Sessions must be held within thirty days. The party, therefore, cannot *renew* his application for relief if the complaint is dismissed, nor can this court issue a *mandamus* to the special Petty Sessions. The question then is, whether a dismissal of the complaint not on the merits, but on a mistaken notion of law, is not, *under such circumstances*, to be considered as an act done against which an appeal lies by the seventh section of the Act. I think that it is, but my opinion is founded on the peculiar provisions and language of the Act, and must not be considered as a precedent in any other case." *Ib.* 547.

(*v*) No witness can be compelled to attend till paid or tendered compensation at the rate of fifty cents a day. Sec. 63.

(*w*) Every assessor, before the completion of his roll, and therefore

Time within which notices of appeal to the Court are to be given.

(2) The notice shall be given to the clerk (or assessment commissioner, if any there be) within fourteen days after the day upon which the roll is required by law to be returned, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose. (*x*)

When elector thinks any person assessed at too low or too high a rate.

(3) If a municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the roll, he may within the time limited by the preceding sub-section give notice in writing to the clerk of the municipality, (or assessment commissioner, as the case may be) and the clerk shall give notice to such person and to the assessor of the time when the matter will be tried by the Court of Revision; and the matter shall be decided in the same manner as complaints by a person assessed. (*y*)

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before the return of it, must leave for every party named thereon, and resident or domiciled or having a place of business within the municipality, and transmit by post to every non-resident who shall have requested his name to be entered thereon and furnished his address to the assessor, a notice of the sum at which his real and personal property has been assessed. Sec. 47. If, upon inspection of it, the person assessed finds in regard to himself, an error or omission of the description mentioned in this subsection, he must, within fourteen days after the time fixed for the return of the roll give notice thereof in writing to the clerk of the municipality, that he considers himself aggrieved for any or all of the causes mentioned in this subsection. If the notice required by sec. 47 has not been served, the assessment might be held invalid. *London* v. *Great Western R. W. Co.*, 16 U. C. Q. B. 500; *Nicholls* v. *Cumming*, 25 U. C. C. P. 169. But see sec. 65. If the notice be served, and the party omit to appeal within the time herein limited, the assessment would bind him. *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248. Mere formal objections to the notice of appeal ought not to be allowed to prevail when no one can be misled or injured by the alleged errors. *In re McCulloch and the Judge of the County Court of Leeds and Grenville*, 35 U. C. Q. B. 452. In the case of palpable errors needing correction, the court may extend the time for making complaints ten days further. Sub-s. 18 of this section.

(*x*) As to computation of time, see note *b* to sec. 185 of the Municipal Act. When the roll was returned on the 1st of May, but the certificate was neither signed nor sworn to until the 4th of May, and the notice to the parties (signed) informed them that they must give notice of appeal within fourteen days from the latter date, a notice of appeal given on the 18th of May was held to be in time. *Re Allan*, 10 O. R. 110.

(*y*) Persons assessed may not only, under the preceding subsection, complain of errors or omissions in regard to themselves, but, under

(4) The clerk of the Court shall post up in some convenient and public place within the municipality or ward a list of all complainants, on their own behalf, against the assessors' return, and of all complainants on account of the assessment of other persons, stating the names of each, with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints; (*z*) and no alteration shall be made in the roll, unless under a complaint formally made according to the above provisions. (*a*) Clerk to give notice by posting up list.

(5) The clerk of the Court shall enter the appeals on the list in the order in which they are received by him, and the Court shall proceed with the appeals in the order, as nearly as may be, in which they are so entered, but may grant an adjournment or postponement of any appeal. (*b*) Order of hearing appeals. Postponement.

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this subsection, any municipal elector, who thinks that any person has been assessed too high or too low, may make a complaint, in which event he, the complainant, should, in writing, request the clerk to notify the person complained against, and the assessor, of the time when the matter will be tried by the court, and it will be the duty of the clerk to do as requested. In England it has been held that if a burgess has been struck off the roll on the application of another burgess, the latter has sufficient interest in the matter to entitle him to appear on a rule for a *mandamus*, though the official defendant does not; and it is proper, though perhaps not imperative, to serve a copy of the rule on such objector. *Reg.* v. *Mayor of Exeter*, 19 L. T. N. S. 432. The court will not grant a *mandamus* to rectify such a roll by the insertion therein of the name of the person omitted for non-residence, unless it be made clearly to appear that he does so substantially and *bona fide* reside within the borough as to make his omission therefrom unreasonable. *Ib.* The Court of Revision in doing what is here authorized, act as it were judicially, and, as judges, are protected in what they do. *Fowler* v. *Parsons*, 20 Am. 431. See also note *u* to sec. 61.

(*z*) See sub. s. 6 as to form of list. It is also the duty of the clerk to advertise in a newspaper the time at which the court will hold its first sitting, sub. s. 7, to cause to be left at the residence of the assessor a list of all the complaints respecting his roll, sub. s. 8, and to notify each person in respect of whom a complaint has been made, sub-s. 9-11, all of which must be at least six days before the sitting of the court. Sub-s. 12. By sub-s. 15 four days notice only is required in the cases therein provided for.

(*a*) Any alteration made otherwise than under a complaint, according to law, would be as it were no alteration, and so regarded. See *Nicholls* v. *Cumming*, 25 U. C. C. P. 169; 26 U. C. C. P. 323; 1 S. C. R. 395.

(*b*) The clerk has no discretion as to the placing of the appeals; his duty is to enter them on the list in the order in which they are

Form of list of appeals.

(6) Such list may be in the following form :—(*c*)

Appeals to be heard at the Court of Revision, to be held at on the day of 18 .

Appellant.	Respecting whom.	Matter complained of.
A. B.	Self	Overcharged on land.
C. D.	*E. F.*	Name omitted.
G. H.	*J. K.*	Not *bona fide* owner or occupant.
L. M. ..... &c.	*N. O.* ..... &c.	Personal property undercharged.

Clerk to advertise sittings of Court,

(7) The clerk shall also advertise in some newspaper published in the municipality, or, if there be no such paper, then in some newspaper published in the nearest municipality in which one is published, the time at which the Court will hold its first sittings for the year, and the advertisement shall be published at least ten days before the time of such first sittings. (*d*)

to leave a list with assessor,

(8) The clerk shall also cause to be left at the residence of each assessor, a list of all the complaints respecting his roll. (*e*)

and prepare notice to person complained against. Form.

(9) The clerk shall prepare a notice in the form following (*f*) for each person with respect to whom a complaint has been made :

"Take notice, that you are required to attend the Court of Revision at on the day of in the matter of the following appeal :

"Appellant, *G. H.*

"Subject—That you are not a *bona fide* owner or occupant, (*or as the case may be,*)

"(Signed) *X. Y.*

"To *J. K.* Clerk."

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received ; but the Court is only obliged to proceed with the appeals in the order "as nearly as may be" with the express power to grant an adjournment or postponement of an appeal.

(*c*) See note *r* to sec 330 of the Municipal Act.

(*d*) "At least ten days." See note *c* to sec. 115 of the Municipal Act.

(*e*) This is directed to be done in order to apprize the assessor of the cause of complaint, so that he may attend and, if deemed proper, support the roll.

(*f*) See note *r* to sec. 330 of the Municipal Act and note *i* to sub-s. 12 of this section.

(10) If the person resides or has a place of business in the local municipality, the clerk shall cause the notice to be left at the person's residence or place of business. (*g*) Service to be at residence.

(11) If the person is not known, then the notice shall be left with some grown person on the assessed premises, if there is any such person there resident; or if the person is not resident in the municipality, then the notice shall be addressed to such person through the post office. (*h*) How absentees served.

(12) Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sittings of the Court. (*i*) When notice to be completed.

(*g*) If the person intended to be notified reside or have a place of business in the municipality, it will be sufficient if the notice be left at his residence or place of business. If a non-resident, it will be sufficient to address the notice to him through the post office. Sub. s. 11, If not known the notice may be left with some grown person upon the assessed premises. Sub. s. 11. Service at the dwelling house is sufficient. *Reg.* v. *Justices of North Riding of Yorkshire*, 7 Q. B. 154; see also *Reg.* v. *Justices of Cheshire*, 11 A. & E. 139. It is doubtful if service on a Sunday would be sufficient. *Reg.* v. *Leominster*, 2 B. & S. 391. If the last day for service fall on Sunday, service would certainly not be sufficient. *Reg.* v. *Justices of Middlesex*, 2 Dowl. N. S. 719; *Asprell* v. *Justices of Lancaster*, 16 Jur. 1067; *Peacock* v. *Reg.*, 4 C. B. N. S. 264; *Wynne* v. *Ronaldson*, 13 W. R. 849. But if allowed to be sent by post, it would seem that the arrival of the notice on Sunday would not invalidate the service. *Reg.* v. *Leominster*, 2 B. & S. 391.

(*h*) If the person be resident *within* the municipality, though not known, notice may be left with some grown-up person on the assessed premises. But if *without* the municipality, then the notice must be addressed to him through the post office. See *Lewis* v. *Evans*, L. R. 10 C. P. 297.

(*i*) An elector served the clerk of the municipality with notice that several persons had been wrongfully inserted on the roll, and others omitted or assessed too high or too low. On the 22nd of May the Court met, when it was objected, on behalf of the parties named in the notice, that only *five* days notice had been given. The Court then adjourned until the 30th of May, directing proper notice to be given. But the clerk omitted to give the notice. The Court, in consequence, on 30th of May refused to hear the appeal, and finally passed the roll: Held, that the decision of the court was not erroneous. *Reg.* v. *Court of Revision of Cornwall*, 25 U. C. Q. B. 286. Held also, that the appearance of the parties, by their counsel, for the purpose of objecting to the sufficiency of the notice, was no waiver of it. *Ib.* And *per* Morrison, J.: "Upon an examination of sub-sections 2, 7, 8 and 10 of sec. 60, C. S. U. C. c. 55 (corresponding with sub-sections 3, 9, 10, and 12 of this section) which bear on this application, we find that they are all imperative by force of the Interpretation Act, and when we consider the object of the com-

Clerk may require assistance in making services.

Power to adjourn.

(13) Where necessary, the clerk of the municipality may, at the cost of the municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make; and in the event of his failure to effect such services in time for the first sitting of the Court, the Court, in its discretion, may appoint an adjourned sitting for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day.

Proceedings when party assessed complains of overcharge on personal property, etc.

Effect of declaration by each party.

(14) If the party assessed complains of an overcharge on his personal property or taxable income, he or his agent may appear before the Court, and make a declaration, in case the complainant appears in person, in the form of Schedule C. D. or E. to this Act, according to the fact; and if the complainant appears by agent, such agent may make the declaration in the form of Schedule F. G. or H., as the case may be; and no abatement shall be made from the amount of income on account of debts due, nor from the value of personal property, other than income, in respect of debts, except debts due for or on account of such personal property; and the Court shall thereupon enter the person assessed at such an amount of personal property or taxable income as is specified in such declaration, unless such Court is dissatisfied with the declaration, in which case the party making the declaration, and any witnesses whom it may be desirable to examine, may be examined on oath by such Court, respecting the correctness of such declaration; (*j*) and such Court shall confirm,

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plaints made by the relator, we cannot overlook the plain words of the statute. The Legislature clearly intended that in all cases of objection by third parties, a notice of complaint must be given to the party complained against at *least* six days before the sitting of the Court at which it is to be heard, and that such notices should be prepared and given in due time by the clerk. . . . The language of the Act is plain and unambiguous. If the mode of proceeding provided by the statute is insufficient, inconvenient or open to abuse, the remedy is with the Legislature. For this Court to say that five days' notice or any less number is sufficient, would be to assume a legislative authority." The provisions with regard to notice under this section are imperative. Such notice is the foundation of the jurisdiction of the Court, and if these provisions have not been complied with, the Court have no authority to deal with the subject matter of the complaint. *Tobey* v. *Wilson*, 43 U. C. Q. B. 230, 236. See further sub-s. 15, where four days notice only is required in the cases therein provided for.

(*j*) Net personal property is personal property, less certain debts. See note *s* to sub-ss. 21, 22 of sec. 7. No one is to be assessed for a less

alter or amend the roll as the evidence seems to warrant. R. S. O. 1877, c. 180, s. 56, (1-14).

Proceedings in other cases.

(15) In other cases, the Court, after hearing the complainant, and the assessor or assessors, and any witnesses adduced, and, if deemed desirable, the party complained against, shall determine the matter, and confirm or amend the roll accordingly; and in all cases which come before the said Court, it may increase the assessment or change it by assessing the right person, the clerk giving the latter or his agent four days notice of such assessment, within which time he must appeal to said Court if he objects to such assessment. (*k*) R. S. O. 1877, c. 180, s. 56, (15); 44 V. c. 25. s. 3.

Oaths of certain parties not necessary.

(16) It shall not be necessary to hear upon oath the complainant or assessor, or the party complained against, unless where the Court deems it necessary or proper, or the evidence of the party is tendered on his own behalf or required by the opposite party. (*l*)

When to proceed *ex parte*.

(17) If either party fails to appear, either in person or by an agent, the Court may proceed *ex parte*. (*m*)

Extension of time for complaints,

(18) Where it appears that there are palpable errors which need correction, the Court may extend the time for making complaints ten days further, and may then meet and deter-

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sum as the amount of his personal property than the amount of his income during the past year, and this without deduction by reason of any indebtedness, "save such as shall equal the annual interest thereof." Sec. 31. The value of personal property, less such debts as may be deducted, or amount of income without deduction for debts, if the assessment be disputed, is *prima facie* determined by the declaration of the party complaining. If the Court is not satisfied with the declaration it may proceed to take evidence and "confirm, alter or amend the roll as *the evidence* shall seem to warrant." Formerly the declaration was *conclusive evidence*.

(*k*) This is an exception from the general provision in sub-s. 12 requiring that every notice "shall be completed at least six days before the sitting of the Court." See also note *c* to sec. 115 of the Municipal Act.

(*l*) This sub-section "gives considerable latitude to the Court as to the taking of evidence and we cannot lay down any absolute rule on the subject. *Per* Hagarty, C. J., in *Canadian Land and Emigration Co.* v. *Dysart*, 12 A. R. 83.

(*m*) It is the duty of the court before proceeding *ex parte* under this section to ascertain whether or not due notice has been given to the parties. See note *u* to sec. 61.

mine the additional matter complained of, and the assessor may, for such purpose, be the complainant. (*n*)

and to finish business by July 1st.

(19) Subject to the provisions of sections 52 and 54, all the duties of the Court of Revision, which relate to the matters aforesaid, shall be completed and the rolls finally revised by the Court, before the 1st day of July in every year (*o*)—except in the municipality of Shuniah, in which municipality all the duties of the Court of Revision which relate to the matters aforesaid shall be completed, and the rolls finally revised, by the Court before the 15th day of July in every year, and except in municipalities coming within the provisions of chapter 185 of these revised statutes. R. S. O. 1877, c. 180, s. 56, (16-19)

Provision as to Shuniah.

Questions open on appeal.

(20) In case any person appeals against his assessment upon any ground, the Court of Revision, or the Judge of the County Court, as the case may be, may re-open the whole question of the assessment, so that omissions or errors in the assessment may be corrected, and the accurate amount for which the assessment should be made be placed on the assessment roll by the Court or Judge before handing the same over to the clerk of the municipality. (*p*) 44 V. c. 25, s. 4.

(*n*) "Palpable," strictly speaking, means, perceptible to the touch a something that may be felt. But according to the general understanding, it means something easily perceived and detected—something so plain that the perception of it immediately produces detection. If errors of this nature appear and are of sufficient importance to be corrected, there may be an extension of time for making complaint in reference to them. Even if not essential that the assessor should be the complainant under this sub-section there must be some complainant. *Tobey* v. *Wilson*, 43 U. C. Q. B. 230, 235.

(*o*) This provision is designed to get rid of the decision in *Nicholls* v. *Cummings*, 1 S. C. R. 395.

(*p*) So far as the Court is concerned, this section would appear to be imperative. But so far as the public is concerned, it may be held to be only directory. See note *g* to sec. 248 of the Municipal Act. Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, it may be ordered to be done under the prerogative writ of *mandamus*. *Per* Lord Campbell, C. J., in *Reg.* v. *Rochester*, 7 E. & B. 924. Of this we have a well-known instance in *Reg.* v. *Sparrow*, 2 Str. 1123, where overseers of the poor not having been appointed for a parish as the statute requires, "in Easter week or within one month after Easter,' a *mandamus* was granted after the expiration of that time to Justices to appoint overseers for that parish, and the appointment having been made was solemnly adjudged to be valid. This decision has been frequently

Roll to be binding, notwithstanding errors in it or in notice sent to persons assessed.

65. The roll, as finally passed by the Court, and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the Judge of the County Court, be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or mis-statement in the notice required by section 47 of this Act, or the omission to deliver or transmit such notice. (*q*) R. S. O. 1877, c. 180, s. 57.

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recognized and acted upon. There can be no doubt that for the public good, and to effectuate the intention of the Legislature, the revision of the list (though the first day of July have passed without it,) if practicable, ought still to take place. The proper course would probably be to apply for a *mandamus* to the head of the council to summon the Court to meet, under the authority given him by sec. 60, with a view to hear and determine the matters complained of, due notices being first given to the respective parties. See *Reg.* v. *Cornwall*, 25 U. C. Q. B. 292. Possibly the writ might be directed to the Court, or members composing it; for though not a corporation, they constitute, as it were, a standing and perpetual tribunal within the municipality. *Per* Lord Campbell, C. J., in *Reg.* v. *Rochester*, 7 E. & B, 925.

(*q*) This provision cures any flaw that may be upon the roll. *Reg. ex rel. Hamilton* v. *Piper*, 8 P. R. 225. In *Earl of Radnor* v. *Reeve*, 2 B. & P. 391, 392, the Court said that "it had been determined by all the Judges of England that when a statute provides that the judgment of commissioners appointed thereby shall be final, their decision is conclusive, and cannot be questioned in any collateral way." In *Berlin* v. *Grange*, 1 E. & A. 285 Robinson, C. J., said: "When the statute provides that after the roll has been finally passed by the Court of Revision it shall bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, that cannot, I think, be taken to mean that it shall be binding on a party whose name there never was *any legal authority* for introducing upon the roll at all, because there the very foundation of assessment against *the party* is wanting," In *Birmingham Churchwardens* v. *Shaw*, 10 Q. B. 868, it was held that a person *exempt* from poor rate as the occupier of premises belonging to a scientific or literary society, must, if assessed for such premises, contest the liability before the inferior Court constituted for the purpose, to whom the appeal is directed to be made by persons complaining of being wrongfully assessed. Lord Denman in giving judgment, said: "We are driven, therefore to consider the second ground on which the rule is supported, whether, namely as regards the present rates, the society is deprived of the benefit of its exemption because it has not appealed against them. And as it cannot be successfully contended that the president might not have appealed, the question is narrowed to this; whether, there being a remedy by appeal, and that remedy passed by, the law will allow an action to be brought for the enforcement of a rate good on its face, and made by a competent authority, on a person and in respect of the occupation of property apparently within the jurisdic-

Copy of assessment roll

66. A copy of any assessment roll, or portion of any assessment roll, written or printed, without any erasure or inter-

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tion of that authority. This is not a new question. Nor is the principle of decision unsettled or difficult. The only difficulty lies in its application. The right of appeal is co-extensive with the operation of the rate. Whether it has defects which make it even a nullity in law, or be objectionable only as excessive in amount, or unequal in its assessment, any one who is grieved by it may appeal. But the right of action is limited, as well for the sake of convenience as on principles of law and justice. The making and allowance of the rate are acts entrusted by the law to certain functionaries, the overseers and the justices; and the exercise of their functions is subjected by the law to revision by a Court of Appeal. If, in the exercise of their functions, *but acting within their jurisdiction*, they do an erroneous act, it is no more null and void, while unquestioned by appeal, than an erroneous decision of this Court on a matter within its jurisdiction while unquestioned by a writ of error. If it be appealed against, the law has made the decision of the Court of Appeal final; and if that court confirmed the act of the inferior functionaries, however confessedly erroneous that decision might be, it would be conclusive for all purposes, and, among others, for enforcement; else this absurdity would follow, that a rate which the Court of direct and final jurisdiction had pronounced valid, must be considered as invalid when considered collaterally in any other court as the protecting authority for the officer of the law who was directed to enforce it. And to this extent there can be no difference between the case of a rate not appealed against and one appealed against and confirmed. The authority of the original Court, up to the time of appeal and subject to that, is exactly of the same force as that of the Court of Appeal. Both stand on exactly the same principles. They are the acts and decisions of functionaries or courts entrusted by the law on matters within their jurisdiction. But all this depends on that limitation of jurisdiction. If in the first instance the primary Court has gone beyond those limits, its act is void. The party grieved may, if he please, appeal, because the statute enables him to do so, and excess of jurisdiction is in itself a ground of appeal as much as merely erroneous decision. And if the court of appeal erroneously confirms the act of the Court below, it may be that the party appealing cannot object to the want of jurisdiction in any collateral proceeding; his own act may estop him personally. But in the case supposed he is not bound to appeal, because he is at liberty to treat the act as void." *Ib.* 878. The reasoning of this case was approved, adopted and applied in *Pedley* v. *Davis*, 10 C. B. N. S. 492, 512. See also *Tobey* v. *Wilson*, 43 U. C. Q. B. 230. The question, then, according to this reasoning, is, whether the act of the assessors in assessing the person complaining was an act within their jurisdiction. If within their jurisdiction, the act remains, unless disallowed by the Court of Revision or on appeal to the County Judge. If not within the jurisdiction, the act is null and void, and no act of the Court of Revision or the County Judge can give it validity. See note *q* to sec. 55. In *Allen* v. *Sharp*, 2 Ex. 352, it was held that the decision of the assessor under 43 Geo. III. c. 99, s. 24, and 43 Geo. III. c. 161, ss. 69-70, to the effect that a person was a "horse dealer," was con-

lineation, and under the seal of the corporation, and certified duly certified to be evidence.

clusive, unless appealed against in the manner prescribed by the statute. Parke, B., said: "On a careful consideration of these Acts of Parliament, they seem to me to differ from the 42 Eliz. c. 2, as to the poor rate, and that the legislature intended that the *assessment* of the assessors appointed by the commissioners should be final and conclusive, unless appealed from in the first place to the commissioners, and further, if necessary, to the judges of the Superior Courts . . . . . Without referring to the statutes, I should say *a priori*, that the object of the Legislature was to make the decision of the assessor final and binding, unless disputed in the manner pointed out. On reading the statutes I come to the same conclusion. . . . . Let us then look to the power of appeal, which possibly might be framed in such a way as to shew that the Legislature did not mean it to be conclusive. This provision is contained in the 24th section of the 43 Geo. III. c. 99, which enacts that 'if any person should think himself *overcharged* or *overrated* by any assessment or surcharge, &c., it shall be lawful for him to appeal to the commissioners, &c. It is argued that the wording of this clause shews that the legislature meant it to apply only to persons liable to be rated, *but rated for too much*. Admitting it to be so, and that the word "overrated" has that meaning, then this plaintiff is in the predicament of a person overrated, since he is clearly liable to *part* of the rate, &c. . . . . I think the word 'overrated' ought not to receive the narrow construction attempted to be put upon it. Though in its strict sense, 'overrating' means rating for *more* than ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all*. If the latter be not the meaning of the word in the statute, this absurdity would follow—that provision is made for the case of an *excess* of rating, and none whatever for a rate altogether unjust." It only remains to be added that our statute, besides using the words "undercharged" or "overcharged," also uses the words, "*wrongfully* inserted on or omitted from the roll," sec. 64. In *Scragg* v. *London*, 26 U. C. Q. B. 271, Hagarty, J., when referring to the language of our statute, said: "Language more apparently indicating the establishment of a rule of decision to govern *all cases* and *bar all further question* as to the liability to assessment could, we think, not easily be used." In *McCarroll* v. *Watkins*, 19 U. C. Q. B. 248, where a person who at one time had been an occupant of a house, but never was owner or had any pretence to be owner, was assessed as owner, but paid no attention to the notice of assessment, Sir J. B. Robinson, said: "But whether he was assessed on the roll as owner or as occupier, it was incumbent on him to appeal or to petition under the 26th section of 16 Vict. c. 182, if he meant to insist that his name was *wrongfully inserted* on the roll. Having *omitted* to do so, he became liable to pay the amount for which he stood assessed on the roll." But it has been held that where the person was improperly assessed, he is not precluded by an adverse decision of the Court of Revision from afterwards disputing his liability to be assessed. *Nickle* v. *Douglas*, 35 U. C. Q. B. 126; 37 U. C. Q. B. 51. In a recent case it was said by Proudfoot, J.:—"Whether there was any income or not is a question of fact to be decided by the authorities specified in the Act; and if the assessor errs in this respect the matter may be set

to be a true copy by the clerk of the municipality, shall be received as *prima facie* evidence in any Court of justice without proof of the seal or signature, or the production of the original assessment roll, of which such certified copy purports to be a copy, or a part thereof. 50 V. c. 32, s. 4.

Further powers granted to Court of Revision for remitting or reducing taxes.

67. The Court shall also, before or after the 1st day of July, and with or without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged; and the Court may, subject to the provisions of any by-law in this behalf, remit or reduce the taxes due by any such person, or reject the petition; (*r*) and the council of any local municipality may, from time to time, make such by-laws, and repeal or amend the same. R. S. O. 1877, c. 180, s. 58.

APPEALS FROM THE COURT OF REVISION.

Appeal from Court of Revision.

68—(1) An appeal to the County Judge shall lie, not only against a decision of the Court of Revision on an appeal to said Court, but also against the omission, neglect or refusal of said Court to hear or decide an appeal. (*s*)

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right by an application to the Court of Revision or by an appeal to the County Judge: R. S. O. c. 180, s. 57 (sec. 65); and the decision of the County Judge is final and conclusive." *London Mutual Fire Ins. Co. of Canada* v. *City of London*, 11 O. R. 592, 596. See also *Canadian Land and Emigration Co.* v. *Dysart*, 9 O. R. 495; 12 A. R. 80. See further, note *q* to sec. 55.

(*r*) The Court is bound to receive and decide upon the petition of a person coming within the meaning of this section. The decision may be either for the remission or reduction of the taxes, or for rejection of the petition, subject always to the provisions of any by-law in this behalf passed by the municipal council.

(*s*) Such an appeal as the present can only exist by statute, and only to the extent that the statute plainly gives the right. *Attorney-General* v. *Sillem*, 10 H. L. Cas. 704; *People* v. *Police Justice*, 7 Mich. 456; *Muscatine* v. *Steck*, 7 Iowa, 505. The municipal authorities are not bound, in the absence of statutory requirement, to inform a person either of his right of appeal or of the proceedings necessary to prosecute the appeal. *Rex* v. *Justices of West Yorkshire*, 3 M. & S. 493, 496; see also, *Murphy q. t.* v. *Harvey*, 9 U. C. C. P. 528.

(2) The person appealing shall, (*t*) in person or by his solicitor or agent, serve upon the clerk of the municipality (or assessment commissioner, if any there be), within five

Service of notice of appeal.

Ignorance of the provisions of a statute, is no excuse for non-compliance with its provisions. Where the appellant not only attended the meeting at which the application was made of the town funds of which he complained, but himself settled the form of the resolution against which he appealed, it was held that he could not be allowed to appeal. *Harrup* v. *Bayley*, 6 E. & B. 218. "According to every principle of justice he cannot complain of what was his own act." *Per* Lord Campbell, C. J., *Ib.* 224. In *Rex* v. *Justices of Norfolk*, 5 B. & Ad. 990-992, Lord Denman said, speaking of appeals to Quarter Sessions: "It is desirable that the Court of Quarter Sessions should not vary their rules from time to time, and that they should rather lean to the hearing of appeals than to dismissing them on technical grounds." But a person who, after a summary conviction, at once expresses dissatisfaction and gives a notice of appeal, is entitled to be heard, although he paid the amount of the fine—the payment having been made to prevent the distress and sale of his goods. *In re Justices of York and Peel*, 13 U. C. C. P. 159; Draper, C. J., said: "I think further, that a party should not, on any doubtful ground, be deprived of a right of appeal against a summary conviction; and that if his conduct can fairly bear a contrary interpretation, it should not be construed as a waiver of this right. I am disposed to extend rather than to narrow Lord Denman's remark, that the Court of Quarter Sessions 'should rather lean to the hearing of appeals than to dismissing them on technical grounds.'" *Ib.* 162, 163.

(*t*) The decision of the Court of Revision is binding, subject to an appeal which is here given apparently on certain conditions. In *Adey* v. *Hill*, 4 C. B. 40, Wilde, C. J., speaking of Eng. Stat. 6 & 7 Vict. c. 18, s. 62, said: "Upon the ground, therefore, that the right of appeal against the decision of the Revising Barrister is given only upon a condition which has not been complied with in the present case, the Court is unanimously of opinion that the appellant is not in a situation to be heard." See further, *Torrance* v. *McPherson*, 11 U. C. Q. B. 200; *In re Meyers and Wonnacott*, 23 U. C. Q. B. 611; *In re Tozer and Preston*, 23 U. C. Q. B. 310; *Pentland* v. *Heath*, 24 U. C. Q. B. 464; *McLellan* v. *McClellan*, 2 U. C. L. J. N. S. 297; *Ex parte Curtis*, 3 Q. B. D. 13. When the Legislature is thus giving to a Judge jurisdiction over rights that have always been the subject of such watchful jealousy, it is in a peculiar manner incumbent on the Judge to confine himself strictly within the limits prescribed for him. "A deliberate deviation from an enactment so express and positive in its terms would induce a mischief much greater than any inconvenience that can arise from the blunder of the appellant in this case." *Per* Wilde, C. J., in *Adey* v. *Hill*, 4 C. B. 38, 40; see further, *Wanklyn* v. *Woolett*, 4 C. B. 86; *Woolet* v. *Davis*, *Ib.* 115. The first point to be noted is, that the notice must be in writing. See *Reg.* v. *Justices of Salop*, 4 B. & Al. 626; *Reg.* v. *Justices of Surrey*, 5 B. & Al. 539; *Reg.* v. *Justices of Lincolnshire*, 3 B. & C. 548; *Reg.* v. *Justices of Huntingdonshire*, 19 L. J. M. C. 127. It is not said that it *must* be signed. *Petherbridge* v. *Ash*, 4 C. B. 74; see also,

days after the date herein limited for closing the Court of

Curtis v. *Bright*, 11 C. B. N. S. 95; *Reg.* v. *Justices of Kent*, L. R. 8 Q. B. 305. It must be given "*within* five days after the first day of July." See note *b* to sec. 185 of the Municipal Act. The first day of July is now the day fixed by law for the final revision of the roll by the Court of Revision, Sub-s. 19, of sec. 64. By sub-s. 12 of sec. 64, it is declared that "every notice hereby required.... shall be completed *at least* six days before the sitting of the Court." See notes to that sub-section. See also sub-section 15. In England, under a somewhat analogous statute, there is a power ("It shall be lawful, &c.") delegated by the Legislature to the Court "if it shall appear to the Court *that there has not been reasonable time* to give or send such notice (ten days at least) in any case to postpone the hearing of the appeal in such case, as to the said Court shall seem meet." 6 & 7 Vict. c. 18, s. 64. In speaking of this provision, Wilde, C. J., said: "Postponing the consideration of the appeals to the next term, as suggested, would not have the effect of relieving the parties from the difficulty (the day appointed for the hearing of the appeals having been unusually early). The day appointed by the Court for the hearing of the appeals would be still the same. Unless, therefore, the Court is prepared to act in a manner that would be wholly inconsistent with judicial gravity and decorum, by resorting to a mere subterfuge in order to get over a supposed difficulty, the objection that now presents itself would not be at all lessened by the lapse of time. *Adey* v. *Hill*, 4 C. B. 38, 40. In another case the same learned Judge said: "The attorney has had the whole time between the decision of the case by the Revising Barrister and the fourth day of the term, inclusive, to prepare and deliver his notice. He has thought fit to leave it till the last moment, when there is no time left to remedy the defect. The only power we have to extend the time is under section 64, and that applies to the notice of the respondent, and not to a case like this." *Petherbridge* v. *Ash*, 4 C. B. 74, 75; see also *Brown* v. *Tamplin*, L. R. 8 C. P. 241. Courts of Revision are now expressly authorized to appoint adjourned sittings for the purpose of hearing appeals, for which notices were not served in time for the first day. Sub-s. 13, of sec. 64. The appearance of the party on whom the notice was served for the purpose of objecting to the sufficiency of the notice, is no waiver. *Reg.* v. *Cornwall*, 25 U. C. Q. B. 286; see also, *Grover* v. *Bontems*, 4 C. B. 70. The notice is to be of the intention to appeal. Its object is simply to inform the parties concerned that the person decided against is dissatisfied, and intends to avail himself of the right to appeal. If it substantially give this information, no matter what the form be, it will be held sufficient. *Reg.* v. *Justices of Denbighshire*, 9 Dowl. 509; *Reg.* v. *Justices of Oxfordshire*, 4 Q. B. 177; *Reg.* v. *Westhoughton*, 5 Q. B. 300; *Reg.* v. *Justices of Buckinghamshire*, 4 E. & B. 259, note *b*; see also, *Reg.* v. *Recorder of Liverpool*, 15 Q. B. 1070. The grounds of the appeal need not be stated on the notice, unless so required by the statute giving the appeal. *Reg.* v. *Westmoreland*, 10 B. & C. 226; see also, *Reg.* v. *Derby*, 20 L. J. M. C. 44; see further, *Reg.* v. *Justices of Newcastle-upon-Tyne*, 1 B. & Ad. 933; *Reg.* v. *Justices of Oxfordshire*, 1 B. & C. 379; *Reg.* v. *Sheard*, 2 B. & C. 856. But it should, on the face of the notice, in some manner appear that the party is dissatisfied with

Revision, a written notice of his intention to appeal to the County Judge (*u*)—except in the municipality of Shuniah, in which municipality the notice shall be given within ten days after the 1st day of August in every year, and except in municipalities coming within the provisions of chapter 185 of these revised statutes. R. S. O. 1877, c. 180, s. 59 (1, 2). Proviso as to Shuniah

(3) The clerk shall immediately after the time limited for filing said appeals forward a list of the same to the Judge, who shall then notify the clerk of the day he appoints for the hearing thereof. (*v*) 50 V. c. 32, s. 5. Day for hearing.

(4) The clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for giving notice on a complaint under section 64 of this Act; but in the event of failure by the clerk to have the required service in any appeal made, or to have the same made in proper time, the Judge may direct service to be made for some subsequent day upon which he may sit. (*w*) Clerk to notify parties.

(5) The clerk of the municipality shall cause a conspicuous notice to be posted up in his office, or the place where the List of appellants, etc., to be posted up by clerk.

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the decision intended to be appealed against. *Reg.* v. *Mayor of Harwich*, 1 E. & B. 617; see also, *Reg.* v. *Justices of West Riding, Yorkshire*, 7 B. & C. 678; *Reg.* v. *Blackawton*, 10 B. & C. 792; *Reg.* v. *Justices of Essex*, 5 B. & C. 431. There does not appear to be any power to waive these notices so as to give the Court jurisdiction. See *Newton* v. *Overseers of Moberly*, 2 C. B. 203, and *Grover* v. *Bontems*, 4 C. B. 70.

(*u*) This provision limits the time after which notice is *not* to be given. A notice given before the closing of the Court of Revision is good. *Scott* v. *Listowel*, 12 P. R. 77.

(*v*) The length of the notice is not here in express terms specified. Possibly sub-s. 12 of sec. 64 would apply, which provides that "every notice hereby required, whether by publication, letter, advertisement or otherwise, shall be completed at least six days before the sitting of the Court." See also next sub-section.

(*w*) In *Reg.* v. *Court of Revision of Cornwall*, 25 U. C. Q. B. 291, Morrison, J., said: "It was argued on the part of the relator that the neglect of the clerk, or a failure by him in the performance of his duty, ought not to have prevented the complaints being heard, and that all that was incumbent on the relator was to make a request under sub-s. 2 to the clerk. Upon an examination of sec. 60, and its sub-ss. 2, 7, 8 and 10, (same as sub-sections 5, 9, 10 and 12 of section 64,) which bear on this application, we find that they are all *imperative*, by force of the Interpretation Act; and when we consider the object of the complaints made by the relator, we cannot overlook *the plain words of the statute.*" The provision here for the authorization of service for a subsequent day, in the event of

council of the municipality hold their sittings, containing the names of all the appellants and parties appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a Court will be held to hear appeals. (*x*)

Clerk of Court.

(6) The clerk of the municipality shall be the clerk of such Court. (*y*)

Hearing and adjournment.

(7) At the Court so holden, the Judge shall hear the appeals, and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, but so that all the appeals may be determined before the 1st day of August (*z*)—except in the municipality of Shuniah (in which

Proviso as to Shuniah, etc.

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failure of the clerk to do what is required of him. meets the difficulty. As to the notice required, see sub-s. 12 of sec. 64.

(*x*) See preceding note.

(*y*) It is obligatory upon the clerk of the municipality to act as clerk of the court. No provision is made for the appointment of a substitute.

(*z*) It has been made a question whether any new evidence can be gone into or fresh witnesses called on an appeal from the decision of an inferior tribunal, in the absence of statutory provision to that effect. In the case of a conviction for an offence, it is said, the party offending has due notice of the hearing, and it is his duty to bring all his evidence to the hearing. *Keen* v. *Stuckely*, Gilb. R. 155, 156; 3 Black. Com. 455. Superior Courts *review* the sentences of inferior ones, but that only, and do not admit new evidence not produced below in order to examine the justice of a sentence that was not in any degree produced by it. See Dickenson, Quarter Sessions, 907, note. In a civil bill appeal in Ireland, Richards, B., held that new evidence is inadmissible. *Gorman* v. *Beaghan*, 3 Cr. & Dix. C. C. 344; Bunker's Digest, 1206. But in *Rex* v. *Commissioners of Excise*, 3 M. & S. 133, it was held that the commissioners of appeals on matters of excise could not properly reject the testimony of witnesses tendered for the appellant, upon an appeal to them against a conviction by the commissioners of excise, upon the ground that such witnesses were not examined at the original hearing. In *Rex* v. *Jeffreys*, 1 B. & C. 604, however, where a person who had been summoned by two justices, under 7 & 8 Will. III. c. 6, s. 1, appeared before them and was ordered to pay the tithes demanded, and raised no question as to the *modus*, but afterwards appealed to the Sessions, and at the Sessions for the first time set up the *modus*, it was held that the Justices of the Sessions might, in the exercise of their discretion, rightly reject the new evidence. In *Rex* v. *Justices of Suffolk*, 1 B. & Al. 640, where an appeal was made to the Sessions against a rate on four grounds specified, and the party, being still dissatisfied, made a further appeal to the General Sessions, specifying two additional grounds of appeal, Bayley, J., said: "The impression on my mind is, that he must, at the *County* Sessions, be confined to

municipality all such appeals shall be determined before the 15th day of September in every year), and except in the cases provided for in sections 52 and 54, and except in municipalities coming within the provisions of chapter 185 of these revised statutes. R. S. O. 1877, c. 180, s. 59 (4-7).

Assessment roll to be produced to the Court, and amended etc.

69. At the Court to be holden by the County Judge, or acting Judge of the Court, to hear the appeals hereinbefore provided for, (*a*) the person having charge of the assessment roll passed by the Court of Revision shall appear and produce such roll, and all papers and writings in his custody connected with the matter of appeal, (*b*) and such roll shall

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the same grounds of objection that he took at the *Borough* Sessions, for the former Court is in the nature of a *Court of Review*, and it is their duty to examine if the rate can be supported on the grounds decided upon by the Court below. If that were not so, it would be open to the party at the Borough Sessions to state any illusory grounds of appeal, and to *put forth his whole strength by surprise at the County Sessions.*" *Ib.* 645. Holroyd, J., said: "The County Sessions are to re-try the same matters which were triable at the Borough Sessions. In all cases of new trials or of error, the Court of Appeal looks at the original proceedings. *There may, however, be fresh evidence adduced.* . . . The appeal to the County Sessions must here be confined to the *original matter of complaint only.*" *Ib.* 646. "It seems to be an universally admitted rule that, in every case of appeal to the Sessions, both parties are at liberty to examine competent witnesses on their behalf, *without regard to whether they have been examined before or not.*" Paley on Convictions, 5th ed., 369. In England, the Legislature has interfered in matters of excise by 7 & 8 Geo. IV. c. 53, s. 84, as amended by 4 & 5 Will. IV. c. 51, s. 24, by providing that no witnesses are to be examined on an appeal in matters of excise except those who were examined before the justices, or tendered for examination and refused by them. See *Reg.* v. *Gamble*, 16 M. & W. 384. In *Kirby* v. *Owners of the Scindia*, L. R. 1 P. C. 241, the Privy Council, as a matter of discretion, refused to receive fresh evidence upon an appeal from an interlocutory decree of the Vice Admiralty Court of the Cape of Good Hope, in a cause of salvage. The result of the authorities would appear to be, that it is in the discretion of the County Judge to receive fresh evidence in support of the grounds of appeal raised in the Court of Revision, but not in support of any new or additional grounds of appeal. A County Court Judge, in appointing a day subsequent to the 1st day of August for hearing an appeal, is not exceeding his jurisdiction notwithstanding the terms of this sub-section. *In re Ronald and the Village of Brussels*, 9 P. R. 232.

(*a*) This section applies to all appeals that may be and are legally brought before the County Judge or acting judge for his decision.

(*b*) The person having the custody of the roll passed by the Court of Revision would, properly speaking, be the municipal clerk. It is made his duty, on the hearing of the appeal, not only to produce the

be altered and amended according to the decision of the Judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error or omission is corrected or supplied; (*c*) and if the decision is not then given the clerk of the Court shall, when the same is given, forthwith alter and amend the roll, according to the same, and shall write his name against every such alteration or correction. (*d*) R. S. O. 1877, c. 180, s. 60.

Amendments how certified.

Powers of Judge sitting in appeal from Court of Revision.

70. In all proceedings before the County Judge or acting Judge of the Court, under or for the purposes of this Act, such Judge shall possess all such powers for compelling the attendance of, and for the examination on oath of all parties whether claiming, or objecting or objected to, and all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, as belong to or might be exercised by him, in the Division Court or in the County Court. R. S. O. 1877, c. 180, s. 61.

Style of proceedings.

71. All process or other proceedings in, about or by way of appeal, may be entitled as follows:— (*e*)

In the matter of appeal from the Court of Revision of the , of

———————————, Appellant,

and

———————————, Respondent,

and the same need not be otherwise entitled. R. S. O. 1877, c. 180, s. 62.

Costs to be apportioned by the Judge, and how enforced.

72. The cost of any proceeding before the Court of Revision or before the Judge as aforesaid shall be paid by or

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roll, but "all papers and writings in his custody connected with the matter of appeal." This would include all exhibits and other papers given in evidence before the Court of Revision, touching the appeal in that Court.

(*c*) It is presumed that the alteration of the roll by the Judge, in any case where he is without jurisdiction, would be of the same and of no other effect than the alteration of the roll by a stranger.

(*d*) It is, in the case here provided for, made the duty of the clerk, forthwith to "alter and amend" the roll, and for evidence in the event of any dispute as to the fact, "to write his name against every such alteration or correction." The order to amend is not the amendment. The latter, to be effectually made, should be actually made; and this is what is provided for by this section. See also sec. 74.

(*e*) See note *r* to sec. 330, of the Municipal Act.

apportioned between the parties in such manner as the Court or Judge thinks fit, and where costs are ordered to be paid by any party claiming or objecting or objected to, or by any assessor, clerk of a municipality, or other person, the same shall be enforced, when ordered by the Court of Revision, by a distress warrant under the hand of the clerk and the corporate seal of the municipality, and when ordered by the Judge, by execution to be issued as the Judge may direct, either from the County Court or the Division Court within the county in which the municipality or assessment district or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such Court. (*f*) R. S. O. 1877, c. 180, s. 63.

What costs chargeable.

73. The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance and none other; (*g*) and the same are to be taxed according to the allowance in the Division Court for such costs; and in cases where execution issues, the costs thereof as in the like Court, and of enforcing the same, may also be collected thereunder. R. S. O. 1877, c. 180, s. 64.

Decision of County Judge to be final.

74. The decision and judgment of the Judge or acting Judge shall be final and conclusive (*h*) in every case adjudi-

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(*f*) As to the costs allowed, see sec. 73.

(*g*) "And none other." These words exclude any allowance for counsel fees or for service of notices, &c.

(*h*) The decision, &c., is made final and conclusive in *every case* adjudicated. The words do not mean that the decisions on appeals to the County Judge shall be final and conclusive to all intents and purposes, but merely that the judgment shall be final and conclusive in the *particular case*. The Judge, though sitting in appeal, may review his previous decisions, and overrule them if demonstrated to be erroneous. See *Webster* v. *Overseers, &c.*, L. R. 8 C. P. 306. And the decision, &c., is only final and conclusive in the particular case adjudicated, *where there is power or jurisdiction to adjudicate*. See note *q* to sec. 55. If there be power to adjudicate, the result is to be looked at as the decision or judgment, regardless of the reasons given for arriving at that result. *In the matter of the Mayor of Hythe*, 5 A. & E. 832; *Reg.* v. *Bolton*, 1 Q. B. 66; *Thompson* v. *Ingham*, 14 Q. B. 710; *Reg.* v. *Dayman*, 7 E. & B. 672; *Forster* v. *Forster*, 4 B. & S. 187; *Reg.* v. *Levi*, 34 L. J. M. C. 174; *Wildes* v. *Russell*, L. R. 1 C. P. 722; *Ex parte Vaughan*, L. R. 2 Q. B. 114; *Elston* v. *Rose*, L. R. 4 Q. B. 4. If there was jurisdiction in the particular Court to adjudicate, and the decision of that Court is made final or conclusive, no other Court can review the sufficiency of the reasons; often there is a good judgment and bad reasons. *Ib.* In

cated, and the clerk of the municipality shall amend the rolls accordingly. R. S. O. 1877, c. 180, s. 65.

Allen v. *Sharp*, 2 Ex. 352-360, Parke, B., said: "Wherever a statute gives to certain persons the power of adjudicating upon a particular matter, their jurisdiction excludes all further inquiry. Here it is as if the statute had said that the assessor shall decide whether or no the person is a horse dealer; and the assessor having done so his decision is final and conclusive, unless appealed against in the manner pointed out by the Act." "I think the design of the Legislature was to work out the whole system of assessment by the machinery provided. First, the action of the assessor; secondly, the appeal to the Court of Revision; Thirdly, the final appeal to the County Judge or Stipendiary Magistrate." Per Hagarty, C. J., in *Canadian Loan & Emigration Co.* v. *Dysart*, 12 A.R. 84. In *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-200, Wilson, J., said: "The Judge had power to *reduce* the assessment made, and he has done so. But it is said he did so upon a false ground and for a bad reason; that he did so because the land was not land according to the interpretation of the Assessment Act, and not because the assessment was too high. There is no rule of law which requires the Judge to give the reasons on which his judgment is founded. His reasons may be bad, but his conclusion or judgment, however illogical it may be, will, nevertheless, be good. We do not think it would be *safe* to say that in *no case* can the decision of the Court of Revision or of the County Judge be questioned by an action, although the statute declares that the decision of the Court shall be valid and binding on all parties if not appealed from to the County Judge, and that his decision shall be final and conclusive. If the Judge were to decide that property expressly exempted was not exempt, or that non-residents should be assessed personally on the roll, although they had given no notice to be so assessed, and protested against it, his decision, no doubt, would *not* be final. It would be void and be inquirable into, in an action, for he would in such a case be acting wholly without jurisdiction. But in cases where he has jurisdiction his decision is final, though it is plainly erroneous. Here he had jurisdiction to say whether *the property* was assessed too high or too low. This gave him authority to inquire into *the nature of the property*. He came to the conclusion that it was assessed too high, because the chief part of the property in question was personal and not real property. His decision that it was personal property was plainly erroneous, for it undoubtedly *was* and *is* land and real estate within the meaning of the statute, and at common law. There is not the *slightest pretence* for calling it personal, yet we *fear* his decision is irreversible. The statute has declared it shall be final and conclusive in all cases adjudicated." If this reasoning be sound, and applied to cases of exemption of real and personal property, it would prove that there is jurisdiction to rate real or personal property plainly exempt from taxation so long as the Judge, with, or without, or against, reason *increases or reduces* the assessment. Take an exemption of real estate by reason of its occupation by the Crown. The Judge has power to inquire into the nature of the property. He comes to the conclusion that it is personal property. He accordingly *increases* the assessment. His decision that it was personal property

75. When, after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the

Copy of roll to be transmitted to county clerk.

was plainly erroneous. But he had jurisdiction to increase or reduce the assessment. The result is, that property which is real estate and exempt by law, is taxed because the Judge having power to increase or reduce *calls* it personal estate and *increases* the amount. But, after all, the question really is, whether a person assessed for property exempt is not as much bound to appeal as the person taxed for property which he does not own; for in the latter case it has been held that if the party *wrongfully assessed* omit to appeal, he is bound by the roll. In *Allen* v. *Sharp*, 2 Ex. 365, Parke, B., said: "Though in its strict sense overrating means rating for *more* than it ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all.*" If in our statute the only words used were "undercharged or overcharged," it might be argued according to the reasoning of Baron Parke, that a person wrongfully assessed is overcharged and so must appeal. But the better opinion appears to be that where an assessor assesses that which is not assessable his act is a nullity, and there is no obligation to appeal against it. *Nickle* v. *Douglas*, 37 U. C. Q. B. 63, 67. Where the foundation of the jurisdiction is defective, a prohibition may be applied for at once. *Mayor, &c., of London* v. *Cox*, L. R. 2 H. L. 239; *Everard* v. *Kendall*, L. R. 5 C. P. 428; *James* v. *London and South Western R. W. Co.* L. R. 7 Ex. 187; *Ib.* 287; *Jay Cook* v. *Gill*, L. R. 8 C. P. 107; *Whinny* v. *Schmidt*, *Ib.* 118; *In re Charkieh*, L. R. 8 Q. B. 197. Those who seek prohibition must apply with promptitude. *In re Denton and Marshall*, 1 H. & C. 654. It may be granted after judgment and sentence in the inferior Court, when the party has had no opportunity of applying earlier to the superior Court, and has not acquiesced in the proceedings of the inferior Court. *Roberts* v. *Humbly*, 3 M. & W. 120; *Yates* v. *Palmer*, 6 D. & L. 283; *Aldridge* v. *Cato*, L. R. 4 P. C. 313; but see *In re Poe*, 5 B. & Ad. 681. It may, in the discretion of the Court, be granted on the application of a stranger. *De Haber* v. *Queen of Portugal*, 17 Q. B. 171; *Reg.* v. *Twiss*, 10 B. & S. 298. The affidavits should be intituled simply in the court, and not in any cause. *Ex parte Evans*, 2 Dowl. N. S. 410; see further *Breeden* v. *Capp*, 9 Ju. 781. If the application fail it will not be allowed to be renewed upon affidavits stating matter not before presented to the Court, but existing at the time of the original application. *Bodenham* v. *Ricketts*, 6 N. & M. 537. The decision of the inferior conrt on facts going to its jurisdiction is reviewable on an application for prohibition. *Liverpool Gas Light Co.* v. *Overseers of Evestow*, L. R. 6 C. P. 414. The court will not in such a case interfere by prohibition, unless it be perfectly clear that there has been an excess of jurisdiction. *Ricordo* v. *Maidenhead Board of Health*, 2 H. & N. 257; *Manning* v. *Farquharson*, 6 Jur. N. S. 1300; *Reg.* v. *Twiss*, L. R. 4 Q. B. 407; see also, *Bonyard* v. *McWhirter*, 12 U. C. Q. B. 143; *McWhirter* v. *Bonyard*, 14 U. C. Q. B. 85; *In re Chief Superintendent of Schools* v. *Sylvester*, 18 U. C. Q. B. 538. If any inferior Court proceed or attempt to proceed in a matter in which it has not jurisdiction, there may be a prohibition. *Darby* v. *Cosens*, 1 T. R. 552; *Ex parte Smythe*, 2 C. M. & N. 748; *Reg.* v. *Hereord*, 3 E. & E. 115. A declaration by

clerk of the municipality shall, without delay, transmit to the county clerk a certified copy thereof. (*i*) R.S.O. 1877, c. 180, s. 66.

Appeals where large amounts involved.

Appeals where large amounts or questions of law involved.

76—(1) Where there is an appeal from any Court of Revision under section 68 of this Act to the County Court Judge of the county in which the assessment is made, and a person, partnership or corporation desiring to appeal has been assessed on one or more properties to an amount aggregating $50,000, such person, partnership, or corporation shall, on depositing with the clerk of the Court of Revision appealed from the sum of $50 to pay the travelling expenses of the board or Judge to be called in as hereinafter mentioned, have the right to have the appeal from the said Court of Revision heard by a board consisting of the Judges of the counties which constitute the County Court District, (*ii*) if the property assessed be in a county which forms part of a County Court District, and if not, then the party or corporation appealing may request, in writing, the said County Court Judge to associate with himself in hearing the said appeal, the Judge or acting Judge of the County Court of the county whose county town is nearest to the court house where the said appeal will be heard, and the said appeal shall thereupon be heard by the County Court Judge and the said Judge so called in as aforesaid, and in such cases the clerk of the municipality shall forthwith notify each of the Judges, whose duty it shall be to attend upon such appeal as aforesaid, by post, prepaid, of all notices of appeal coming within the provisions of this section, which are

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statute, that the proceedings of an inferior tribunal shall be final and conclusive, is held not to deprive the party of a writ of *certiorari* in cases where it is proper for such a writ to go—not to try the merits, but to see where the limited jurisdiction has exceeded its bounds. *Rex* v. *Morley*, 2 Burr. 1040; see also, *Reg.* v. *Wallace*, 4 O. R. 127; *Ex parte Heath*, 3 Hill (N. Y.) 42; *Rex* v. *Commissioners*, 2 Keble 43; *Lawton* v. *Commissioners*, 2 Caines (N. Y.) 179; *Starr* v. *Trustees*, 6 Wend (N. Y.) 564; *People* v. *The Mayor*, 2 Hill (N. Y.) 9; *Tierney* v. *Dodge*, 9 Minn. 166. But where the declaration is made in reference to a Court of general and superior jurisdiction, as of the Supreme Court of New York (for example, in confirming appraisements for opening streets), there can be no appeal in any manner to a higher tribunal. *In re Canal and Walker Streets*, 12 N. Y. 406; *In re New York Railroad Co.* v. *Marvin*, 11 N. Y. 276.

(*i*) See note *g* to sec. 248 of the Municipal Act.

(*ii*) See Rev. Stat. c. 46, s. 17 *et seq.*

from time to time served upon him, and the Judge of the county in which the city, town, township or village lies, the decision of whose Court of Revision has been appealed against, shall arrange a day for the hearing of such appeals, and shall notify the clerk thereof, and the clerk shall immediately notify, by post, prepaid, the other Judge or Judges and the parties appealing.

(2) Where an appeal against an assessment lies from a Court of Revision to the Stipendiary Magistrate of the district or provisional county in which the property assessed is situate, and a person or corporation desiring to appeal is assessed on one or more properties in any township or union of townships to an amount in the aggregate exceeding $50,000, such person or corporation shall have the right to appeal either to the said Stipendiary Magistrate or (on depositing with the clerk of the municipality the sum of $50 to defray the travelling expenses of the County Court Judge hereinafter mentioned) to the Judge of the County Court of the county to which the said provisional county or district is attached for judicial purposes; the notice of such appeal, the time for bringing the same on, and the procedure generally, to be the same as in the case of an ordinary appeal from a Court of Revision to a County Court Judge.

(3) Sections 68 to 77 inclusive, shall apply to all appeals taken under the preceding two sub-sections, and the said Judges shall have the powers and duties which by the said sections, 68 to 77, are assigned to the County Court Judge therein referred to.

(4) When two Judges hear the appeal, and differ in their opinion as to the allowance of the said appeal or otherwise, then the said assessment appealed from shall stand confirmed.

(5) The clerk with whom any money is deposited to pay the travelling expenses as aforesaid shall pay out of the moneys so deposited, upon requisition by the Judge, such sum as the said Judge shall certify to him as his travelling expenses in connection with the said appeal, and shall repay the balance, if any, to the person or corporation depositing the same.

(6) The provisions of this section shall also be held as applying in any case where the person, partnership, or cor-

poration desiring to appeal has been assessed on properties to an amount not less than $20,000, and not exceeding $50,000, provided that the matter of appeal involves questions of law, and does not involve only the question of the value at which such properties have been so assessed. 48 V. c. 42, s. 16.

APPEALS BY NON-RESIDENTS.

Appeals with respect to non-residents' lands.

77. In case any non-resident, whose land within the limits of any city, town, incorporated village or township, has been assessed in any revised and corrected assessment roll, (*j*) complains by petition to the proper municipal council, at any time before the 1st day of May in the year next following that in which the assessment is made, such council shall, at its first meeting, after one week's notice to the appellant, try and decide upon such complaint; (*k*) and all decisions of municipal councils under this Act may be appealed from, tried and decided, as provided by section 68 and following sections of this Act; and if the lands are found to have been assessed twenty-five per centum higher than similar land belonging to residents, the council or Judge shall order the taxes rated on such excess to be struck off; (*l*) and, in all such cases, where the land has been subdivided into park, village, or town lots, if the same are owned by the same person or persons, the statute labour tax shall be charged only upon the aggregate of the assessment, according to the provisions of this Act; (*m*) but no roll shall be amended, under this section of this Act, if the

Lots subdivided not to affect rolls revised and corrected.

(*j*) This section probably has reference only to non-residents whose names are not on the roll, and who would therefore not receive the notice made necessary by section 41 of this Act, and who would not have any notice of the day on which the roll would be returned, so as to appeal within fourteen days after its return, as required by sec. 64, sub-ss. 1 & 2.

(*k*) See sec. 64 and notes thereto. "I do not find by a reading of the Act that the assessment roll as it affects non-resident lands (not assessed to the owners) is of such a conclusive character as in the case of other lands which come before the Court of Revision. Compare sec. 57 (now 65) with sec. 67," (same as this section). *Per* Boyd C. in *Hall* v. *Farquharson*, 12 O. R. 604.

(*l*) If the council be of opinion that the land is not rated higher than similar land belonging to non-residents, they will, of course, dismiss the complaint. *In re Judge of Perth*, 12 U. C. C. P. 252.

(*m*) See sec. 100 sub-s. 2.

complaint was tried and decided before such roll was finally revised and corrected, under the provisions of sections 64 to 75 of this Act. (*n*) R. S. O. 1877, c. 180, s. 67.

EQUALIZATION OF ASSESSMENTS.

Annual examination of assessment rolls by municipal councils, and for what purpose.

78. The council of every county shall, yearly, before imposing any county rate, and except as provided by sections 52 and 54, not later than the 1st day of July, (*o*) examine the assessment rolls of the different townships, towns, and villages in the county, for the preceding financial year, (*p*) for the purpose of ascertaining whether the valuations made by the assessors in each township, town or village bear a just relation one to another, (*q*) and may, for the purpose of county rates, increase or decrease the aggregate valuations of real and personal property in any township, town or village, adding or deducting so much per centum as may, in their opinion, be necessary to produce a just relation between the

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(*n*) A previous judgment between the same parties on the same subject matter operates as an estoppel. *Commissioners of Leith Harbour* v. *Inspectors of the Poor*, L. R. 1 H. L. Sc. 17, 23.

(*o*) See note *g* to sec. 248 of the Municipal Act.

(*p*) See *In re Revell and Oxford*, 42 U. C. Q. B. 337.

(*q*) Valuation of property, real or personal, is, to a great extent, a matter of opinion. See note *k* to sec. 26. Some men are more sanguine than others, and therefore more likely, looking to the future, to make a higher estimate of present value than those who are less sanguine. Some men in there inquiries are more careless than others, and so more likely to take things for granted. These and similar considerations influencing assessors acting independently of each other, often produce very dissimilar results even in adjoining municipalities. But so far as the county is concerned for the purpose of county rates, a just relation is needed in order that the rate levied may bear, as nearly as possible, equally on all the local municipalities in the county. In order to bring this about, when inequality is found, a power to increase or decrease the aggregate valuations of taxable property in the local municipalities of the county, so long as the whole aggregate valuation of the county is not reduced, must be exercised by some body having authority over the whole of the local municipalities, and that body is the county council. The legislature has not attempted absolutely to prescribe by what method of proceeding the local municipalities shall be made to bear a just relation to each other. It could hardly have succeeded in any such attempt. Much must, of necessity, be left to the judgment of those who are to conduct the operation, and who, by reason of their local knowledge, are best qualified to do so. *Per* Robinson, C. J., in *Gibson and Huron and Bruce*, 20 U. C. Q. B. 119.

valuations of real and personal estate in the county; (*r*) but

(*r*) We may suppose the council fixing upon some one township or town, in the first place, as that in which the value appears to have been assigned with the strictest regard to truth and justice, and then having selected such a standard, we may suppose them taking up each township, town, &c., and adjusting the valuation by such standard. In doing this, the members of the council must, of necessity, be governed by their own judgment, and could not, in the nature of things, have any rule given to them by which they could arrive at any particular result. It must be entirely a matter of opinion whether, if land cleared or uncleared in township A. is valued at such a sum per acre, land in township B. ought to be valued at any and what other sum per acre. But when the council shall have adopted the proportional value which land in one township bears to land in another, and shall have compared them all by some standard, then they must ascertain and express how much per cent. must be added or deducted from the assessment in each local municipality to make them all bear just relation to each other. This is not given as a rule or method of proceeding that can guide or assist the council in adjusting the relation between the different local municipalities, but as a method by which they are to express to the collectors the effect of the relation they have established, as leading to an addition or deduction of so much per cent. to or from the assessment of each individual, according as they have found the assessment that has been made in the particular local municipality too high or too low, as compared with the standard by which they have resolved to abide. This direction to the collector makes his duty afterwards simple and precise. But the business of the council in equalizing the assessments is not one that can be accomplished by any arithmetical calculation. No two bodies of men, any more than any two individuals, could be expected to arrive at the same conclusions, if they attempted to make the adjustment independently of each other. The Legislature has not attempted to instruct the council how they are to proceed in order to do equal justice. It has done the best it could in committing the duty to them on general terms of equalizing the assessments, so as to produce a just relation, but has necessarily left it to them, as best they can, to work out the problem. It is a thing more easily talked of than done. *Per* Robinson, C. J., in *Gibson and Huron and Bruce*, 29 U. C. Q. B. 120. It is not for a Court of law to interfere, as regards the reasonableness of the valuations and the conclusions to be come to on that point, by comparing the value set upon land in one municipality with the value set upon land in another. It is not for a Court to judge of that. Even if it were, there are various circumstances to be taken into consideration as bearing upon the question of computation and value, of which a Court has not the means of judging, for want of that local knowledge which the members of the county council, chosen by the people themselves, must be supposed to possess, and doubtless do possess. It is not merely the fact that one township has been long settled, and another not so long, that should alone influence the judgment in making the comparison, nor yet the number of inhabitants, though these are circumstances that would naturally be taken into consideration. Quality of soil and of

they shall not reduce the aggregate valuation thereof for the whole county as made by the assessors. R., S. O. 1877, c. 180, s. 68 (1); 46 V. c. 24, s. 1.

Appeal as to equalization of assessments.

79. If any municipality is dissatisfied with the action of any county council in increasing or decreasing, or refusing to increase or decrease, the valuation of any municipality, the proceedings shall be as follows:

1. The municipality so dissatisfied may appeal from the decision of the council at any time within ten days after such decision, (*s*) by giving to the clerk of the county council notice in writing, which notice shall state whether the municipality appealing is willing to have the final equalization of the assessment made by the County Judge; (*t*)

2. Every county council, at the same session in which the assessment has been equalized, shall determine whether the said council is willing to have the final equalization of the assessment, in case of appeal, made by the County Judge;

3. Upon receiving notice of appeal, in case any party to the appeal has objected to the final equalization of the assessment being made by the County Judge, the clerk of the county council shall forthwith notify in writing the Provincial Secretary of such objection, giving the name or names of the municipality or municipalities so objecting; 43 V. c. 27, s. 18 (1-3).

4. The Lieutenant-Governor in Council, upon receiving the notice in writing from the clerk of any county council, may appoint two persons, one of whom shall be the sheriff or

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timber, abundance or scarcity of water, distance from market, and the description of inhabitants, as well as their numbers, are matters that require to be considered in comparing one township with another; and when these and all other matters have been considered, the conclusions to which they lead are to be formed by the council, and not by a court of law. But so far as the Legislature has assumed to prescribe rules for the guidance of a municipal body, in the discharge of any duty or exercise of any power, such body must, beyond doubt or question, conform to the rules. And if the council, where rules have been prescribed for their action, were to go contrary to the rules or in any way violate them, the court, if this were clearly made out, would interfere by writ of *mandamus*; *Reg.* v. *Middlesex*, 2 E. & B. 694, and the act itself might be held illegal in any proceeding in which its legality would come in question. *Lincoln* v. *Niagara*, 25 U. C. Q. B. 578.

(*s*) See note *b* to sec. 185 of the Municipal Act.

(*t*) See note *u* to sec. 61 of this Act.

registrar of the county in which the appeal is made, and the other a Judge of another county, who, together with the County Judge, shall form a Court, and the said Court shall, at such time and place as the Lieutenant-Governor in Council may appoint, proceed to hear and determine the matter of appeal either with or without the evidence of witnesses, or with such evidence as they may decide upon having, and may examine witnesses under oath or otherwise, and may adjourn from time to time, and, except as provided in sections 52 and 54, the judgment of the said Court shall not be deferred beyond the 1st day of August next after the notice of the appeal; and the Court shall equalize the whole assessment of the county. And in the event of the assessment of any one or more municipalities being reduced or increased by the Court, directions shall be given to the clerk of the county council to increase or reduce the rate imposed by the by-law of the county council so that such rate will, calculated upon the finally revised and equalized assessment, produce the sum which such by-law is intended to provide. (*u*) 42

(*u*) In *Simcoe* v. *Norfolk*, 5 U. C. L. J. N. S. 182, where the amount of the aggregate value of assessment of the municipality appealing was reduced, the learned Judge, in delivering judgment, said in conclusion: "I therefore allow the appeal of the town of Simcoe, and equalize their aggregate assessment for county purposes at the said sum of $303,000 (the amount returned on the roll). This leaves the total aggregate equalization of the county at the sum of $57,000 less; and it devolves upon me, according to the provisions of the statute, to divide and add this sum to or among the several townships of the county, or some of them. In the absence of any evidence produced before me, and in the absence of any action of the county council, it appears to me that my proper course is to divide and add the said sum of $57,000 *pro rata*, according to the previous equalization by the county council, among the several townships of the said county, thus:—

Townships.	Equalization by County Council.	Added by Judge.	Total.
Townsend	$1,140,000	$13,500	$1,153,500
Windham	735,000	8,800	743,800
Middleton	360,000	4,400	364,400
Houghton	285,000	3,300	288,300
Walsingham	760,000	9,000	769,000
Charlotteville	700,000	8,300	708,300
Woodhouse	825,000	9,700	834,700
Simcoe, say $360,000	360,000	..	..
Deducted by judge .. 57,000	..	..	303,000
$303,000	$5,165,000	$57,000	$5,165,000

V. c. 31, s. 33 (3); 43 V. c. 27, s. 18 (4); 48 V. c. 42, s. 15.

5. The Judge of the other county shall be entitled to a reasonable allowance for his services, the same not to exceed $10 a day, besides his travelling and other expenses, and to be paid by the county; 43 V. c. 27, s. 18 (5).

6. Any two members of such Court shall constitute a quorum, and such Court may proceed and adjudicate upon such appeal, notwithstanding the office of sheriff or of registrar or of County Judge is vacant; 42 V. c. 31, s. 33 (5).

7. Where all the parties to the appeal have agreed, as above provided, to have the final equalization of the assessment made by the County Judge, the clerk of the county council shall forthwith notify in writing the County Judge, and the County Judge shall appoint a day for hearing the appeal, not later than ten days from the receipt of such notice of the appeal, and may on such day proceed to hear and determine the matter of appeal, and may adjourn the hearing from time to time, but, except as provided in sections 52 and 54, the judgment shall not be deferred beyond the 1st day of August next after such appeal; and the Judge shall equalize the whole assessment of the county. (*v*) 43 V. c. 27, s. 18 (6).

Appeal in cases of equalization of assessment.

8. The right of appeal shall exist whether county valuators have been appointed or not, and upon any such appeal the report of the county valuators shall be open to review by the Court or Judge as herein provided. 41 V. c. 13, s. 1.

Effect of clerk of municipality omitting to send copy of roll.

80. If the clerk of the municipality has neglected to transmit a certified copy of the assessment roll, such neglect shall not prevent the county council from equalizing the valuations in the several municipalities according to the best information obtainable; (*w*) and any rate imposed, according to the equalized assessment, shall be as valid as if all the assessment rolls had been transmitted. R. S. O. 1877, c. 180, s. 69.

(*v*) See last preceding note.

(*w*) It would never do if the neglect of a clerk of one local municipality to transmit a certified copy of his roll were to have the effect of delaying the entire proceedings of the county council, with a view to equalization of assessment. especially as it is provided that the equalization is to be made "not later than the first day of July."

Valuators to attest their report on oath.

81. In cases where valuators are appointed by the council to value all the real and personal property within the county, (*x*) they shall attest their report by oath or affirmation in the same manner as assessors are required to verify their rolls by section 142 of this Act. R. S. O. 1877, c. 180, s. 70.

Apportionment of county rates, how to be based.

82. The council of a county, in apportioning a county rate among the different townships, towns and villages within the county, (*y*) shall, in order that the same may be assessed equally on the whole ratable property of the county, make the amount of property returned on the assessment rolls of such townships, towns and villages, or reported by the valuators as finally revised and equalized for the preceding year, the basis upon which the apportionment is made. (*z*) R. S. O. 1877, c. 180, s. 71.

Sec. 78. The only remedy is that provided, viz., to proceed to equalize, notwithstanding the absence of a particular roll or rolls.

(*x*) The proper valuators of property, real and personal, in the different local municipalities, are the assessors. But as these in the several local municipalities, act independently of each other, and as men, perhaps, differ more widely on the value of property than other matters of opinion, the results so far as the whole county is concerned, are anything but equal or uniform. Before a county rate can be imposed, the valuations in the different local municipalities must be equalized so as to bear a just relation to each other. Sec. 78. Such equalization has hitherto been effected through the members of the County Council themselves using their local knowledge in order to arrive at as correct a judgment as possible. This section appears to be designed as an aid to them in the exercise of that judgment. It is not declared that the valuation of the county valuators shall be binding on the council, or their judgment in any way made a substitute for the judgment of the members of the county council, on whom devolves the duty of making the equalization so as to produce a just relation. As to the appointment and duties of county valuators, see sec. 269 of the Municipal Act.

(*y*) See sec. 84, and notes thereto.

(*z*) It is by sec. 78 declared that the county council, *before imposing* any county rate, and not later than the first day of July, shall examine the rolls of the several local municipalities, in order to equalize them for the current year, so as to bear a just relation to each other. Here it is declared that in *apportioning* a county rate among the different local municipalities the amount of property returned on the rolls or reported by the valuators as finally revised and equalized *for the preceding year*, shall be the basis of apportionment. See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345. The council of a county in passing by-laws to levy money for county purposes in 1877 apportioned the assessment for the different municipalities not upon the basis of the

Case of new municipalities.

83. Where a new municipality is erected within a county, so that there are no assessment or valuators' rolls of the new municipality for the next preceding year, (*a*) the county council shall, by examining the rolls of the former municipality or municipalities of which the new municipality then formed part, ascertain, to the best of their judgment, what part of the assessment of the municipality or municipalities had relation to the new municipality, and what part should continue to be accounted as the assessment of the original municipality, and their several shares of the county tax shall be apportioned between them accordingly. R. S. O. 1877, c. 180, s. 72.

County councils to apportion sums required for county purposes.

84. Where a sum is to be levied for county purposes, or by the county for the purposes of a particular locality, the council of the county shall ascertain, and, by by-law, direct what portion of such sum shall be levied in each township, town or village in such county or locality. (*b*) R. S. O. 1877, c. 180, s. 73.

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value according to the rolls as finally revised and equalized for 1876, but according to the rolls for 1877; Held illegal; *In re Revell and Oxford*, 42 U. C. Q. B. 337.

(*a*) New as well as old municipalities are liable to contribute to the county rate. See *Reg.* v. *Mayor, &c., of Birmingham*, 10 Q. B. 116; *Reg.* v. *New Windsor*, 1 Q. B. D. 152; 34 L. T. N. S. 172; *Reg.* v. *Monck*, 36 L. T. N. S. 720. The apportionment of a county rate must be on the basis of the rolls as finally revised and equalized for the preceding financial year. Sec. 82. In the case of a new municipality erected during the current year, it is plain there can be no such roll. But in order that the direction of the statute may be, as nearly as possible under the circumstances, carried out, it is by this section made the duty of the county council, by examining the rolls of the former municipality or municipalities of which the new municipality formed a part, to ascertain to the best of their judgment—

1. *What part* of the assessment of the municipality or municipalities had relation to the new municipality;
2. And *what part* should continue to be accounted as the assessment of the original municipality.

so as to apportion between them "their several shares of the county tax."

(*b*) The sum to be levied may be either for county purposes or for the purposes of a particular locality in the county. If the former, the rate must be levied as nearly as possible equally on each local municipality in the county. *Tylee* v. *Waterloo*, 9 U. C. Q. B. 575. If the latter, it may be levied in the particular locality, without reference to other localities in the county. The by-law in *Tylee and Waterloo* enacted that the following sums should be levied and col-

County Clerk to certify amounts to clerks of local municipalities.

85. Subject to the provisions of sections 52 and 54 the county clerk shall before the 15th day of August in each year, certify to the clerk of each municipality in the county, the total amount which has been so directed to be levied therein for the then current year, for county purposes, or for the purposes of any such locality; and the clerk of the municipality shall calculate and insert the same in the collector's roll for that year. (*c*) R. S. O. 1877, c. 180, s. 74.

Act not to affect provisions for rates to raise interest on county debentures.

86. Nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on county debentures, whether such provisions are contained in any Municipal Act now or formerly in force in this Province, or in any Act respecting the Consolidated Municipal loan Fund in Ontario or in any general or special Act authorizing the issue of debentures, or in any by-law of

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lected in the under-mentioned townships and incorporated villages, viz:

Township of Arthur	£34
Township of Bentinck	22
Town of Guelph	153

—and so on, enumerating twenty-four different localities, and assigning to each a certain sum, ranging from £6 for the township of Melancthon to £521 for the township of Waterloo, and that these sums should be levied and collected in the different municipalities, in accordance with the statute. In giving judgment, Sir J. B. Robinson, said: "The last of the by-laws moved against is that of the 14th of June, 1851, which is clearly illegal, for by it the county council assumes to rate certain townships (municipalities?) for certain sums, without specifying in the body of the by-law for what purpose the money is required, or authorizing its appropriation to any purpose. Such a mode of taxing is clearly unauthorized by law. For any general purpose of the county, all the ratable property in the county must be assessed ratably, whether in one township or another. If the council had a discretion to tax in this manner, they might make one township contribute £5 and another £500 to the same county objects, even where there was no inequality in the population and wealth of the townships. It imposes no rate per pound, nor directs an equal rate to be assessed."

(*c*) A duty is, by this section, cast upon the county clerk as well as the local clerk. The former must certify *the amount* directed to be levied, and whether for county purposes or local purposes (see note *b* to sec. 73); and the latter, on receipt of the certificate, shall make *the necessary calculations* in order to ascertain the necessary rate, and insert the rate, when ascertained, in the collector's roll for the current year. The duty in each case, so far as the officer is concerned, is imperative. See note *g* to sec. 248 of the Municipal Act.

the county council providing for the issue of the same. (*d*) R. S. O. 1877, c. 180, s. 75.

STATUTE LABOUR.

Certain persons in military service exempt.

87. No person in Her Majesty's Naval or Military Service on full pay, or on actual service, shall be liable to perform statute labour or to commute therefor; nor shall any non-commissioned officer or private of the Volunteer Force, certified by the officer commanding the company to which such volunteer belongs or is attached as being an efficient volunteer; (*e*) but this last exemption shall not apply to any volunteer who is assessed for property. R. S. O. 1877, c. 180, s. 76. (*Firemen exempted in certain cases. See* Rev. Stat. c. 188, s. 6.)

Who liable and in what ratio, in cities, towns and villages.

88. Every other male inhabitant of a city, town or village of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the assessment roll of the city, town or village, or whose taxes do not amount to $2, shall, instead of such labour, be taxed at $2 yearly therefor, to be levied and collected at such time, by such person, and in such manner as the council of the municipality may, by by-law, direct, (*f*) and such inhabitant shall not be required to have any property qualification. R. S. O. 1877, c. 180, s. 77.

Power to reduce or abolish payment in lieu of statute labour.

89. The council of every city, town and incorporated village may pass a by-law or by-laws to reduce or abolish the amount to be paid in lieu of statute labour, as provided by the next preceding section. (*g*) 46 V. c. 24, s. 2.

Where to be performed.

90. Subject to the provisions of the next preceding section, no person shall be exempt from the tax in section 88 mentioned, unless he produces a certificate of his having performed statute labour or paid the tax elsewhere. (*h*) R. S. O. 1877, c. 180, s. 78.

(*d*) See sec. 340 of the Municipal Act, and notes thereto.

(*e*) See notes to sub-ss. 1-5 of sec. 521 of the Municipal Act.

(*f*) Before this enactment it was held that a council of a village could not pass a by-law to provide for commutation of statute labour. *Re Stayner*, 46 U. C. Q. B. 275.

(*g*) See further, notes to sub-ss. 1-5 of sec. 521 of the Municipal Act.

(*h*) Where there is no power to tax there is no need of an appeal

Liability of persons not otherwise assessed in townships.

91. Subject to the provisions of the next succeeding section, every male inhabitant of a township, between the ages aforesaid, who is not otherwise assessed, and who is not exempt by law from performing statute labour, shall be liable to two days of statute labour on the roads and highways in the township. (*i*) R. S. O. 1877, c. 180, s. 79.

Power to reduce or abolish statute labour.

92. The council of every township shall have the power to pass by-laws to reduce the amount of statute labour to be performed by the ratepayers or others within the township, or to entirely abolish such statute labour and the performance thereof by all persons within said township. (*j*) 43 V. c. 27, s. 21.

Ratio of service in case of persons assessed.

93.—(1) Every person assessed upon the assessment roll of a township shall, if his property is assessed at not more than $300, be liable to two days' statute labour; at more than $300, but not more than $500, three days; at more than $500, but not more than $700, four days; at more than $700, but not more than $900, five days; and for every $300 over $900 or any fractional part thereof over $150, one additional day; but the council of any township, by a by-law operating generally and ratably, may reduce or increase the number of days' labour to which all the parties, rated on the assessment roll or otherwise, shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. (*k*)

Council may reduce or increase the number of days proportionately.

Lots subdivided as park lots, etc.

(2) In townships where farm lots have been subdivided into park or village lots, and the owners are not resident, and have not required their names to be entered on the assessment roll, (*l*) the statute labour shall be commuted by the township clerk, in making out the list required under section 121 of this Act, where such lots are under the value of $200, to a rate not exceeding one-half per centum on the

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to the Court of Revision, and where an appeal is had and fails the person appealing is not according to the most recent authority on the point precluded by the result of the appeal from further contesting his liability to the tax. See note *q* to sec. 55 and note *q* to sec. 65.

(*i*) See notes to sub-ss. 1-5 of sec. 521 of the Municipal Act.

(*j*) See sub-s. 6 of sec. 521 of the Municipal Act.

(*k*) See notes to sub-ss. 1-5 of sec. 521 of the Municipal Act.

(*l*) See sec. 3, and notes thereto.

valuation: (*m*) but the council may direct a less rate to be imposed by a general by-law affecting such village lots. (*n*) R. S. O. 1877, c. 180, s. 80.

Commutation may be at $1 per day.

94. The council of any township may, by by-law, direct that a sum not exceeding $1 a day shall be paid as commutation of statute labour for the whole or any part of such township, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes. (*o*) R. S. O. 1877, c. 180, s. 81 ; 51 V. c. 29, s. 6.

Commutation may be fixed at any sum not exceeding $1.

95. Any local municipal council may, by a by-law passed for that purpose, fix the rate at which parties may commute their statute labour, at any sum not exceeding $1 for each day's labour, and the sum so fixed shall apply equally to residents who are subject to statute labour, and to non-residents in respect to their property. (*p*) R. S. O. 1877, c. 180, s. 82.

If no by-law, commutation to be at $1.

96. Where no such by-law has been passed, the statute labour in townships, in respect of lands of non-residents, shall be commuted at the rate of $1 for each day's labour. (*q*) R. S. O. 1877, c. 180, s. 83.

Farmers sons.

97. Every farmer's son, rated and entered as such on the assessment roll of any municipality, shall, if not otherwise exempted by law, be liable to perform statute labour or commute therefor, as if he were not so rated and assessed. R. S. O. 1877, c. 180, s. 84.

(*m*) In the case of non-resident proprietors whose names do not appear on the roll, the charge is made against the lot of land, and not against the proprietor. *Canada Company* v. *Howard*, 9 U. C. Q. B. 654.

(*n*) See sub-s. 3 of sec. 521, and sec. 17, sub-s. 3 (*a*) of the Municipal Act.

(*o*) See note *r* to sub-s. 2 of sec. 521 of the Municipal Act.

(*p*) See notes to sub-ss. 1-5 of sec. 521 of the Municipal Act.

(*q*) See notes to sub-ss. 1 and 2 of sec. 521 of the Municipal Act. A township council can provide for the performance of statute labour upon the roads of their township to the extent of the commutation tax charged in respect of non-resident lands, and for payment therefor out of the general funds of the municipality before such tax has been received from the county treasurer; and the performance of such work is not necessarily restricted to any particular statute labour division. *In re Allan and the Township of Amabel*, 32 U. C. C. P. 242.

Payment of tax in lieu of statute labour may be enforced by distress or imprisonment.

98.—(1) Any person liable to pay the sum named in section 88, or any sum for statute labour commuted under section 94 of this Act, shall pay the same to the collector to be appointed to collect the same, within two days after demand thereof by the said collector; and in case of neglect or refusal to pay the same, the collector may levy the same by distress of goods and chattels of the defaulter, with costs of the distress; and if no sufficient distress can be found, then upon summary conviction before a Justice of the Peace of the county in which the local municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of $5 with costs, and, in default of payment at such time as the convicting Justice shall order, shall be committed to the common gaol of the county, and be there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid. (*r*)

(2) Any person liable to perform statute labour under section 91 of this Act not commuted, shall perform the same when required so to do by the pathmaster or other officer of the municipality appointed for the purpose; and, in case of wilful neglect or refusal to perform such labour after six days' notice requiring him to do the same, shall incur a penalty of $5, and upon summary conviction thereof before a Justice of the Peace aforesaid, such Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels, and, in case there is no sufficient distress, such offender may be committed to the common gaol of the county and there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol are sooner paid. (*s*)

(*r*) Section 88 applies to inhabitants of *cities*, *towns* or *villages* not otherwise assessed, or whose taxes do not amount yearly to $2. Statute labour as to these, after the demand made necessary by this section, may, it seems, be enforced without first summoning the defaulter or making any formal conviction. See note *s* to sub-s. 4 of sec. 521 of the Municipal Act.

(*s*) Section 91 applies to inhabitants of *townships* not otherwise assessed. The statute labour as to these may, it is believed, after the necessary demand, be enforced without a previous summons or warrant. See note *s* to sub-s. 4 of sec. 521 of the Municipal Act.

(3) All sums and penalties, other than costs, recovered under this section, shall be paid to the treasurer of the local municipality, and form part of the statute labour fund thereof. R. S. O. 1877, c. 180, s. 85. *See Rev. Stat.* c. 197, s. 7.

Non-residents when not admitted to perform statute labour.

99. No non-resident who has not required his name to be entered on the roll, (*t*) shall be permitted to perform statute labour in respect of any land owned by him, but a commutation tax shall be charged against every separate lot or parcel according to its assessed value: (*u*) and, in all cases in which the statute labour of a non-resident is paid in money, the municipal council shall order the same to be expended in the statute labour division where the property is situate, or where the said statute labour tax is levied. (*v*) R. S. O. 1877, c. 180, s. 86.

When non-residents admitted, but do not perform statute labour.

100—(1) In case any non-resident, whose name has been entered on the resident roll, (*w*) does not perform his statute labour or pay commutation for the same, the overseer of highways in whose division he is placed shall return him as a defaulter to the clerk of the municipality, before the 15th day of August, and the clerk shall in that case, enter the commutation for statute labour against his name in the collector's roll; (*x*) and in all cases both of residents and non-residents, the statute labour shall be rated and charged against every separate lot or parcel according to its assessed value.

Amount of non-residents' statute labour.

(2) Whenever one person is assessed for lots or parts of several lots in one municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner; (*y*) but every resi-

Proviso.

(*t*) See sec. 3 and notes thereto.

(*u*) See note *p* to sub-s. 1 of sec. 521 of the Municipal Act.

(*v*) The latter part of this section applies only to non-residents whose names are entered on the assessment roll and whose tax is paid to or levied directly by the local municipality and does not apply to taxes of non-residents received from the county treasurer. *Re Allan and the Township of Amabel*, 32 U. C. C. P. 242, 247.

(*w*) See sec. 3 and notes thereto.

(*x*) See sec. 120 and notes thereto.

(*y*) The second sub-section of this section is an amendment made

dent shall have the right to perform his whole statute labour in the statute labour division in which his residence is situate, unless otherwise ordered by the municipal council. R. S. O. 1877, c. 180, s. 87.

If resident owner, etc., makes default commutation for statute labour to be entered upon collector's roll.

101—(1) Where a resident owner, tenant, or occupant who has been entered upon the assessment roll, after notice or demand, makes default in performing his statute labour or in payment of commutation for the same, the overseer of the highways in whose division he is placed, shall return him as a defaulter to the clerk of the municipality before the 15th day of August, and the clerk shall in that case enter the commutation for statute labour against his name in the collector's roll, and the same shall be collected by the collector.

Overseer to expend the commutation money.

(2) In every such case the clerk shall notify the overseer of highways, that may be appointed for such division in the following year, of the amount of such commutation, and the overseer shall expend the amount of such commutation upon the roads in the statute labour division where the property is situate, and shall give an order upon the treasurer of the municipality to the person performing the work. 50 V. c. 32, s. 6.

Statute Labour in Unincorporated Townships—Road Commissioners.

Meeting for election of road commissioners.

102. Twenty resident landholders in any township which has not been incorporated (either alone or in union with some other township) shall have the right to have a public meeting called for the purpose of electing road commissioners. 46 V. c. 22, s. 1.

Requisition for meeting.

103. The persons desiring the meeting to be called shall sign a requisition authorizing some person named in the requisition, and who may either reside in the township or otherwise, to call a meeting of the resident landholders of the township for the purpose aforesaid. 46 V. c. 22, s. 2.

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to this section as it originally stood by statute 33 Vict. c. 27 s. 6. The Assessment Act of 1869 placed the lands of residents and non-residents, as regards the performance of statute labour or payment of statute labour commutation, on the same footing. Such was the law before 1866. *Canada Co.* v. *Howard*, 9 U. C. Q. B. 654. But the Act of 1866 granted a privilege to non-residents which was not enjoyed by residents. The Act of 1869 destroyed it. The Act 33 Vict. c. 27, s. 6, to a great extent has restored the privilege.

104. In case the person so named declines to call a meeting or neglects to do so, for ten days after the request is presented to him, any three of the persons who signed the requisition may call the meeting. 46 V. c. 22, s. 3. How meeting may be called in case person named in requisition fails to call it.

105. The notice calling the meeting shall name a place, day and hour, where the meeting is to be held; it shall be posted at six places at the least in the township, and the day named shall be at least six days distant from the day of posting the notice. (z) 46 V. c. 22, s. 4. Notice of meeting.

106. The election shall take place at the time named, and the number of the commissioners to be elected shall be either three or five, as may be stated in the requisition, unless the meeting shall, before proceeding to an election, decide that a number different from that stated in the requisition shall be elected, but such number shall not be less than three nor more than five. 46 V. c. 22, s. 5. Number of commissioners.

107. In case the meeting is called by the person named in the requisition, he shall be entitled to preside at the meeting as chairman, but if he is absent or declines to act, the landholders present may appoint another chairman; the chairman shall act as returning officer, and shall, in the event of a tie, have a casting vote, although he may have previously voted, or may not be a landholder of the township; the landholders present shall also appoint a secretary, who shall record the proceedings. 46 V. c. 22, s. 6. Chairman of meeting.

108. The landholders present shall decide how the voting for commissioners shall be conducted, and if the vote is taken openly the commissioners shall be elected one at a time, but if it is decided to proceed by ballot all the commissioners shall be elected together, each person having the right to vote for as many persons as there are commissioners to be elected. 46 V. c. 22, s. 7. Mode of voting.

109. The chairman shall, at the request of any two landholders present, direct the secretary to record the names of all persons voting and (unless the vote is by ballot) how each votes. 46 V. c. 22, s. 8. Record of persons voting.

110. If an objection is made to the right of any person to vote at the meeting, such person shall name the property in Objections to voters.

(z) See note *c* to sec. 115 of the Municipal Act.

respect of which he claims the right to vote, and the chairman shall administer to such person an oath, or affirmation if he be by law permitted to affirm, according to the following form whereupon such person shall be permitted to vote:

You swear (*or, if the voter is entitled to affirm,* solemnly affirm, *as the case may be*), that you are of the age of twenty-one years, and that you are the owner or locatee of lot in the concession of this township, and that you are entitled to vote at this election.

So help you God.

46 V. c. 22, s. 9, Form A.

Term of office.

111. The commissioners elected shall hold office until the 31st day of December next after their election, and shall take the declaration of office before a Justice of the Peace, similar to that of a councillor in a municipal corporation. 46 V. c. 22, s. 10; 51 V. c. 29, s. 7.

First meeting of commissioners.

112. The commissioners shall meet within a fortnight after their election, and shall then, or as soon thereafter as may be, name the roads and parts of roads upon which statute labour is to be performed, and shall appoint the places and times at which the persons required to perform statute labour are to work. 46 V. c. 22, s. 11.

Time for performance of statute labour.

113. The times to be appointed for the performance of statute labour shall, unless the meeting of landholders to elect commissioners otherwise directs, be not earlier than the 20th day of June, nor later than the 20th day of July in any year. 47 V. c. 32, s. 24.

Ratio of service by owners and locatees of land.

114—(1) Each owner or locatee of land may be required each year to perform two days' labour for every one hundred acres he holds, and for the first ten acres which he has cleared after the first ten, he may be required to perform one day's additional labour, and for every twenty acres over and above the first ten, one additional day's labour, and each householder may be required each year to perform one day's labour. 46 V. c. 22, s. 12; 51 V. c. 29, s. 8.

(2) Any land-owner, owning less than one hundred acres, may be required to perform statute labour as the commissioners may direct, but not exceeding the scale provided for in sub-section 1 of this section where the land is in part cleared, and not exceeding two days where no part of the land is cleared. 51 V. c. 29, s. 8.

115. Each commissioner shall, during the time he is required to perform statute labour, act as overseer, and the commissioners shall arrange among themselves for overseeing the various bodies of men engaged in doing statute labour. A commissioner may be paid out of the commutation fund for not exceeding two days' labour at the rate of $1.25 per day, if performed by him over and above the number of days' labour he may by law be required to perform in respect of his own property. The commissioners shall have the same powers as municipalities have in reference to statute labour, to appoint overseers and require returns to be made to them of the labour performed in their districts respectively. 46 V. c. 22, s. 13; 51 V. c. 29, s. 9. Commissioners to oversee work.

116. Any person instead of performing the statute labour required of him may commute therefor by payment at the rate of $1 per day, and the commissioners shall expend all commutation moneys upon the roads on which the labour which is commuted for should have been performed. 46 V. c. 22, s. 14. Commutation.

117. The majority of the commissioners may call a meeting, to be held at any time during the month of January, for the election of their successors, but in case of their failure so to do, a meeting may be called in the manner hereinbefore provided for a first election. 46 V. c. 22, s. 15. Meeting for election of new commissioners.

118. Any person liable to perform statute labour under the next preceding 16 sections, who, after six days' notice requiring him to do the same, wilfully neglects or refuses to perform, at the time and place named by the commissioners, the number of days' labour for which he is liable, shall incur a penalty of $5, and in addition $1 for each day in respect of which he makes default, the same to be paid to the commissioners and to be expended in improving the said roads, and upon such person's conviction thereof before a Justice of the Peace having jurisdiction in the township, such Justice shall order the penalty together with costs of prosecution and distress, to be levied by distress of the offender's goods and chattels. 46 V. c. 22, s. 16. Penalty for neglect to perform work.

118 (*a*). The commissioners when duly elected shall serve during the term they are elected for or forfeit the sum of $5, which may be sued for together with costs in any Court having jurisdiction by any three electors making the complaint. 51 V. c. 29, s. 10. Service of commissioners.

COLLECTION OF RATES.

Clerks of municipalities to make out collectors' rolls; their form, contents, etc.

119. The clerk of every local municipality shall make a collector's roll or rolls as may be necessary, containing columns for all information required by this Act, to be entered by the collector therein ; (*a*) and in such roll or rolls he shall set down (*b*) the name in full of every person assessed, and the

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(*a*) All the directions in this section are to the clerk, and not to the council. His authority is the matter is derived solely from the statute. With his duty, under this section, the council of the municipality has nothing whatever to do. The duty is a statutory obligation which the clerk is bound to perform. See *Grier* v. *St. Vincent*, 13 Grant 512, 519. See also *Clarke* v. *Palmerston*, 6 O. R. 616.

(*b*) The statement of an aggregate amount where separate amounts are required to be stated would be no compliance with the statute, and the roll itself would be so far defective as to be no justification for a levy under it. *Coleman* v. *Kerr*, 27 U. C. Q. B. 5, 13. But if some of the rates be correctly stated, the distress will be so far legal, in the absence of a tender of the legal rates, that neither can the goods seized be replevied nor trespass maintained for the seizure. *Squire* v. *Mooney*, 30 U. C. Q. B. 531 ; see also, *Corbett* v. *Johnston*, 11 U. C. C. P. 317. In *Cook* v. *Jones*, 17 Grant 488, 490, Spragge, C., said : "I think that though there are very good reasons for the provision in the statute, that they (the rates) should be kept separate, still the provision is only directory, and under *Connor* v. *Douglass*, 15 Grant 456, the omission to keep them separate would not invalidate a sale for taxes." A rate having been imposed for the purpose of building a new school house, certain persons in the municipality, who were not Roman Catholics, but Protestants, signed a notice to the clerk (he being one of them), that as subscribers to the Roman Catholic separate school they claimed to be exempt from all rates for common schools for the year 1861 ; and the clerk in making up the roll, omitted this rate opposite to their names. Held, that the clerk had acted illegally, and was liable to punishment. *In re Risdale* v. *Brush*, 22 U. C. Q. B. 122. Burns, J., in delivering judgment, said : "He (the clerk) seems to have thought that he, as clerk of the municipality, had a right to omit on the collector's roll carrying out the rate to his own name and the [names of the] others who signed that notice. This is a clear violation of his duty as prescribed by the 89th and 90th sections of the Assessment Act, chapter 55 of the Consolidated Acts (similar to this section.) When the town council passed the by-law authorizing the levying of such a sum as the school trustees required, it was the duty of the clerk to calculate the rate that each person should pay, according to the assessed value of his property, and set the sum down on the collector's roll. Whether the individuals named in the collector's roll would be exempt from *payment* of any sum or rate mentioned in the roll depended upon something else, which the clerk, in the discharge of his duty as far as making out the roll according to law, had nothing to do with." *Ib.* 125. But although the Court in

assessed value of his real and personal property and taxable income, as ascertained after the final revision of the assessments, (*c*) and he shall calculate, and opposite the said assessed value as therein described of each respective person, he shall set down in one column to be headed "*County Rates*," the amount for which the person is chargeable for any sums ordered to be levied by the council of the county for county purposes, and in another column to be headed "*Township Rate*," "*Village Rate*," "*Town Rate*," or "*City Rate*," as the case may be, the amount with which the person is chargeable in respect of sums ordered to be levied by the council of the local municipality for the purposes thereof, or for the commutation of statute labour, and in other columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by the by-law imposing it, to be kept distinct and accounted for separately; and every such last mentioned rate shall be calculated separately, and the column therefor headed "*Special Rate*," "*Local*

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this case, held that the clerk had acted illegally, in the present defective state of the law on this point they felt that they were powerless to grant any summary relief. Burns, J., said: "Mr. Brush's duty as clerk of the municipality ended when he completed the roll and placed it in the hands of the collector for the collection of the rate. We can nowhere find that it is laid down, either in the Assessment Act or the Municipal Act, that it is the duty of the clerk to certify either to the collector or to the treasurer any errors which may have been made. There are provisions with respect to errors and mistakes made, and that the lands stated shall not be exempt from the taxes by reason of the error or mistake, but we can nowhere find it stated to be a duty upon the clerk of any municipality to certify to any other person or authority when such error or mistake exists or has been made." *Ib.* 126. And again: "There is no difficulty in pronouncing that the clerk, in this instance, did not discharge his duty according to law; but the difficulty consists in saying that we can, by a *mandamus*, at this stage of the proceedings, order him to do anything which will have the effect of remedying the defective execution of his duty. After giving the matter much thought and consideration, we have arrived at the conclusion that we must discharge the rule for a *mandamus*." *Ib.* 127. The clerk, when preparing the roll, ought not to insert in the column headed "County Rate" an allowance for the cost of collecting the county rate, and for abatements and losses which might occur in the collection of it.

(*c*) The assessment is for the purpose of designating the person to be charged, but no debt is due until the rate on the dollar is imposed and the amount of the taxes thus ascertained and fixed. *Devanney* v. *Dorr*, 4 O. R. 206.

Rate," "*Public School Rate*," "*Separate School Rate*," or "*Special Rate for School Debts*," as the case may be. R. S. O. 1877, c. 180, s. 88.

Provincial taxes to be assessed and collected in same manner as local rates.

120. All moneys assessed, levied, and collected under any Act by which the same are made payable to the Treasurer of this Province, or other public officer, for the public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the collectors' rolls in separate columns, in the heading whereof shall be designated the purpose of the rate; (*d*) and the clerk shall deliver the roll, certified under his hand, to the collector, on or before the 1st day of October, or such other day as may be prescribed by a by-law of the local municipality. (*e*) R. S. O. 1877, c. 180, s. 89.

Clerk to make out rolls of lands of non-residents whose names not in assessment rolls, etc.

121. The clerk of every local municipality shall also make out a roll in which he shall enter the lands of non-residents whose names have not been set down in the assessor's roll, together with the value of every lot, part of lot, or parcel, as ascertained after the revision of the rolls; and he shall enter opposite to each lot or parcel all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the collector's roll, and shall transmit the roll so made out, certified under his hand, to the treasurer of the county in which his municipality is situate, or to the treasurer of the city, or town, as the case may be, on or before the 1st day of November. (*f*) R. S. O. 1877, c. 180, s. 90.

(*d*) The local machinery is the best adapted for the collection of taxes, and therefore is made available for more than local purposes. See note *b* to sec. 119.

(*e*) It is here made the duty of the clerk to deliver the roll, certified under his hand, to the collector, on or before the first day of October, or such other day as may be prescribed by a by-law of the local municipality. Unless the roll be *certified* as directed, the collector is not bound to act under it. *Vienna* v. *Marr* 9 U. C. L. J. 301. A certificate on the roll is not necessary to charge the sureties of the collector in an action against them for his default. It is sufficient if the roll is signed by the clerk. *Welland* v. *Brown*, 4 O. R. 217.

(*f*) *Not* like the roll mentioned in the preceding section, sec. 120, because on the non-resident land roll there cannot legally be the

COLLECTORS AND THEIR DUTIES.

122. The collector, upon receiving his collection roll, shall proceed to collect the taxes therein mentioned. (*g*) R. S. O. 1877, c. 180, s. 91. Duties of collectors.

123—(1) In cities and towns he shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local municipality in and for which such collector has been appointed, and shall demand payment of the taxes payable by such person or he shall leave or cause to be left with the person taxed, or at his residence or domicile, or place of business, or upon the premises in respect of which the taxes are payable, a written or printed notice, specifying the amount of such taxes, and shall, at the time of such demand or notice, or immediately thereafter, enter the date thereof on his collection roll opposite the name of the person taxed, or cause the same to be so entered; and such entry shall be *prima facie* evidence of such demand or notice. 45 V. c. 28, s. 5. Collectors to demand payment of rates

(2) In places other than cities and towns he shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of bnsiness, if within the local municipality in and for which such collector has been appointed, and shall demand payment of the taxes payable

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names of any persons on whom the collector can or may call for payment of taxes. The treasurer would not, it is apprehended, be bound to accept the roll unless certified as directed. See note *e* to sec. 120. But the neglect of the clerk either to transmit the copy directed, or his transmission of it in an imperfect form, would not invalidate a sale of non-resident land for taxes. *Allan* v. *Fisher*, 13 U. C. C. P. 63.

(*g*) The collector is to proceed to collect the taxes—that is, the money due in respect of taxes. He has no right to accept promissory notes or securities of any kind in lieu of money. The acceptance of such a security could in no way interfere with the right to distrain. See *Spry* v. *McKenzie*, 18 U. C. Q. B. 161. Where a collector is charged with the collection of taxes for several years consecutively, he has the right to apply money made or money paid for taxes to the taxes in arrear during the first of the years. *McBride* v. *Gardham*, 8 U. C. C. P. 296. A collector of taxes legally qualified acting within the scope of his power is protected from all illegalities but his own, and this although there is no jurisdiction to tax the person assumed to be taxed. *Nowell* v. *Tripp*, 14 Am. 572. In the absence of some statutory provisions regarding the giving of receipts for money paid the collector is not obliged to give receipts. *Stiles* v. *Hitchcock*, 19 Am. 121.

by such person, (*h*) and shall, at the time of such demand, enter the date thereof on his collection roll opposite the name of the person taxed; and such entry shall be *prima facie* evidence of such demand. (*i*) R. S. O. 1877, c. 180, s. 92.

When payment is not made, collectors to levy the tax by distress and sale.

124—(1) In case a person neglects to pay his taxes for fourteen days after such demand, or, in the case of cities and towns, after such demand or notice as aforesaid, (*j*) the collector may, by himself or by his agent, (*k*) levy the

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(*h*) The demand is essential to the validity of subsequent proceedings authorized by the statute. *Campbell* v. *Elma*, 13 U. C. C. P. 296; see further, *Grece* v. *Hunt*, 2 Q. B. D. 389; see as to non-resident land, *De Blaquiere* v. *Becker*, 8 U. C. C. P. 67. As to what constitutes a proper demand. See *Chamberlain* v. *Turner*, 31 U. C. C. P. 460, 473; *Carson* v. *Veitch*, 9 O. R. 706. The distress cannot be made for fourteen days after the demand. Sec. 124. If the demand be legally made upon the person taxed, no subsequent demand, in the event of change of occupation, is necessary to enable the collector to distrain the goods of the subsequent occupant. *Anglin* v. *Minis*, 18 U. C. C. P. 170. And *per* Wilson, J.: "If the collector be required to make a fresh demand fourteen days before he can distrain, upon every change of ownership of occupancy, he may be baffled for ever. Besides he cannot tell whether there has been a change of ownership or not, though he might be better able to know of a change of occupancy." *Ib.* 178. But the person in possession, whether the person assessed or not, may be looked upon as the person "who ought to pay the taxes," so as to make a demand on him sufficient without showing a demand on the person assessed. See note *n* to sec. 124.

(*i*) This is a most important provision. Without it, the entry certainly would not be evidence of the demand in the lifetime of the collector. See *Barton* v. *Dundas*, 24 U. C. Q. B. 273. But with it, the bare fact of the entry appearing on the production of the roll is evidence of the *fact* of the demand, and, it is believed, *the date* of the demand. There was no such provision in the Act of 1866. It first appeared in the Assessment Act of 1869. See further, note *e* to sec. 131.

(*j*) *As aforesaid.* See note *h supra.*

(*k*) The collectors of taxes are officers annually appointed to collect the taxes, which, in far the greater number of instances, they are able to do by merely calling upon those against whom they are charged. In cases where they may have to resort to compulsory measures although the Legislature has enabled them to levy in person and without the authority of any process, yet it was scarcely contemplated that the collectors themselves would, as a matter of course, act the part of bailiffs and auctioneers in seizing and selling. *Per* Robinson, C. J., in *Fraser* v. *Page*, 18 U. C. Q. B. 336; see also, *Newberry* v. *Stephens*, 16 U. C. Q. B. 69. So that while power is given to the collector by himself to levy, it is also said he may by his agent levy. But when a bailiff or agent is appointed, he ought,

same (*l*) with costs, by distress of the goods and chattels (*m*)

strictly speaking, to receive a warrant, which may be in the following form:

CITY OF ——
to wit. } To *A. B.* my Bailiff.

You are hereby authorized and required to distrain the goods and chattels of *C. D.* of, &c., which you shall find on the premises of the said *C. D.* at, &c., or any goods and chattels in his possession, wherever the same may be found within the county of, &c., for the sum of, &c., rated against him for taxes on the collector's roll of, &c., for the year, &c., and now in arrear and unpaid, and in default of payment of such arrears of taxes and the lawful costs of the said distress, to sell and dispose of the said distress according to law, for the recovery of the said arrears of taxes together with the said costs, and for your so doing this shall be your sufficient authority.

Given under my hand at, &c., this —— day of ——. A.D. 18—.

E. F., Collector.

Of course the collector would be liable for anything done by the bailiff, which he had authorized the bailiff to do. *Corbett* v. *Johnston* 11 U. C. C. P. 317. Whether he would, like a sheriff, be liable for anything done by the bailiff, without the authority of or contrary to the direction of the warrant, is a question which has never yet been determined. The late Chief Justice McLean was of opinion in the affirmative, but the late Sir John Robinson expressed grave doubts on the question. See *Fraser* v. *Page*, 18 U. C. Q. B. 336, 338. If there be several rates, the legal separable from the illegal rates, unless the sums due in respect of the legal rates be paid or tendered, an action of replevin or trespass will not lie. See note *b* to sec. 119. Should the person distrained upon, by his own misconduct, prevent the distress from being realized, it would seem that a second distress may be lawfully made. *Lee* v. *Cooke*, 3 H. & N. 203.

(*l*) Where a collector of taxes having seized more chattels than sufficient to pay the tax and costs of sale after selling enough for that purpose, proceeded further and sold all the remainder of the distress consisting of distinct and separate articles it was held that he was a trespasser only as to the goods in excess of the amount of the tax and expenses. *Scekins* v. *Goodale*, 14 Am. 568.

(*m*) A planing machine standing by its own weight on the floor, without fastening, with belts and an engine to work it, has been held to be a chattel liable to seizure for taxes. *Hope* v. *Cumming*, 10 U. C. C. P. 118. So an engine and boiler detached from the freehold by a fire, have been held to be chattels. *Walton* v. *Jarvis*, 14 U. C. Q. B. 640. So temporary floors, scantling, partitions, presses, shafting, vats, cocks, and other such things. *Hughes* v. *Towers*, 16 U. C. C. P. 287. So machinery of different kinds detached from the freehold, *Carscallen* v. *Moodie*, 15 U. C. Q. B. 304, unless perhaps for a temporary purpose, with the intention of again replacing it in its former position. *Grant* v. *Wilson*, 17 U. C. Q. B. 144; see also, *Great Western R. W. Co.* v. *Bain*, 15 U. C. C. P. 207; *Pronguey* v. *Gurney*, 37 U. C. Q. B. 473.

of the person who ought to pay the same, (*n*) or of any goods or chattels in his possession, wherever the same may be found within the county in which the local municipality lies, or of any goods or chattels found on the premises, the property of, or in the possession of, any other occupant of the premises; (*o*) and the costs chargeable shall be those payable to bailiffs under *The Division Courts Act.* R. S. O. 1877, c. 180, s. 93; 45 V. c. 28, s. 6.

Rev. Stat. c. 51.

Levy of taxes under warrant.

(2) If at any time after demand has been made, or, in the case of cities and towns, after demand has been made or notice served by the collector as aforesaid, and before the expiry of the fourteen days mentioned in this section, the collector has good reason to believe that any party by whom taxes are payable, is about to remove his goods and chattels out of the municipality before the fourteen days has expired, and makes affidavit to that effect before the mayor or reeve

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(*n*) What is the meaning of the expression "who ought to pay the same?" Is it to be considered with reference to the time during which it may be said the collector's roll is in force for each year's taxes? or is it to be understood as extending to any length of time and to any person who may happen at the time of the distress to be in possession? The former appears to be the proper construction according to *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. But the latter would seem to be sanctioned by *Anglin* v. *Minis*, 18 U. C. C. P. 170; *Squire* v. *Mooney*, 30 U. C. Q. B. 531; see further, *Plumstead Board of Works* v. *Ingoldby*, L. R. 8 Ex. 63; 174.

(*o*) It is evident that the Legislature intend the taxes to be paid in some way, and think it better to make *any* goods in the possession of the party, whether belonging to himself or not, liable without doubt, for the taxes, than that the collector should be at the risk and expense of contesting title with every one who might claim title to the goods seized. *Per* Burns, J., in *Frazer* v. *Page*, 18 U. C. Q. B. 340. If the distress be made on the goods and chattels of the person "who ought to pay the taxes," it may be made on his goods and chattels in his possession, although not on the assessed premises, provided made within the County. *Anglin* v. *Minis*, 18 U. C. C. P. 170, 179. By an agreement between the Great Western Railway Co. and the Erie and Niagara Railway Co., the former were working the latter line of railway with their own engines and cars, and the defendant, as collector, seized one of such cars on the line of railway for taxes due by the Erie and Niagara Railway Co. in respect of other land belonging to the Company. Held, that the seizure was illegal, for the car, when taken, was in the possession of the Great Western Railway Co. and their own property. *Great Western R. W. Co.* v. *Rogers*, 29 U. C. Q. B. 245. No action will lie against a collector or bailiff for distraining the goods of a stranger without necessity, upon the allegation that there were goods enough of the person assessed to pay the taxes to satisfy the demand. *McEtheron* v. *Menzies*, 7 U. C. L. J. 244.

of the municipality, or before any Justice of the Peace, such mayor, reeve or justice shall issue a warrant to the collector authorizing him to levy for the taxes and costs, in the manner provided by this Act, although the fourteen days after demand or notice, as the case may be, may not have expired, and such collector may levy accordingly. 44 V. c. 25, s. 5; 45 V. c. 28, s. 7.

(3) A city shall, for the purposes of this section, be deemed to be within the county of which it forms judicially a part. 48 V. c. 42, s. 14.

Proceedings in case of non-residents.

125. If any person whose name appears on the roll is not resident within the municipality, the collector shall transmit to him by post, addressed in accordance with the notice given by such non-resident, if notice has been given, a statement and demand of the taxes charged against him in the roll, (*p*) and shall, at the time of such transmission, enter the date thereof on the roll opposite the name of such person; and such entry shall be *prima facie* evidence of such transmission and of the time thereof, (*q*) and the said statement and demand shall contain written or printed on some part thereof the name and post office address of such collector. R. S. O. 1877, c. 180, s. 94; 45 V. c. 28, s. 8.

When collectors may distrain for rates on non-residents' lands.

126. In case of the land of non-residents, who have required their names to be entered on the roll, the collector, after one month from the date of the delivery of the roll to him, and after fourteen days from the time such demand as

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(*p*) When the collector proceeds to enforce payment, he is to deal with those whose names appear on the roll. If they are *within* the municipality, he is to call upon them, or at their residence or place of business, and demand payment. See note *h* to sec. 123. If they are *without* the municipality he is, under this section to transmit to them by post a statement of the taxes charged against them on the roll, and demand payment. In *Anglin* v. *Minis*, 18 U. C. C. P. 170, 175, Mr. Justice Wilson, said: "This last provision as to not being within the municipality applies, I think, as well to the owners of non-resident lands who have requested to be assessed, as to the persons who were residents at the time the assessment was made, and who were assessed as owners or occupants, but who have since removed from the municipality." *Anglin* v. *Minis*, was decided under the Consolidated Statute, cap. 55. Section 95 of that Act had not as here, the words "addressed in accordance with the notice given by such non-resident, if notice has been given." Their introduction shows that the section now beyond question applies to non-resident owners who have requested to be assessed.

(*q*) See note *i* to sec. 123.

aforesaid has been so transmitted by post, (*r*) may make distress of any goods and chattels (*s*) which he may find upon the land; (*t*) and no claim of property, lien or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof. (*u*) R. S. O. 1877, c. 180, s. 95.

(*r*) In the case of non-residents, the transmission of the statement and demand, under 16 Vic. c. 182, was held not to be a condition precedent to the power of distress. *De Blaquiere* v. *Becker*, 8 U. C. C. P. 167, But now it is clear, under this section, that the demand or statement is a condition precedent to the distress. See note *h* to sec. 123.

(*s*) *Goods and chattels.* See note *m* to sec. 124.

(*t*) The collector has no legal power to go out of his county for the purpose of making a distress. He may under section 124 make a distress of the goods and chattels of the person who ought to pay the taxes or of any goods or chattels in his possession, wherever the same may be found in the county within which the local municipality lies. But in the case of a non-resident the power of distress is only as to any goods and chattels *which he may find upon the land.* Any goods found upon the land, whether belonging to the party who ought to pay the taxes or to a stranger, are liable to be so distrained. See note *o* to sec. 124.

(*u*) It is probable that under these words a distress by a collector for taxes would supersede a prior seizure by the sheriff under execution. *Adshead* v. *Grant*, 4 P. R. 121. But a mere notice by the collector to the sheriff of the amount due for taxes is not a distress so as to supersede the prior claim of the sheriff under this section. *Ib.* In the absence of a *distress*, the execution creditor is entitled to the entire proceeds of the sale, to the exclusion of the tax collector. *Ib.* Chattels in possession of a receiver of the Court of Chancery were seized and sold by a bailiff for taxes, Neither the bailiff nor the purchaser knew until after the completion of the sale that the property was in the receiver's possession, or was intended to be affected by the order appointing a receiver, and both had been informed to the contrary in good faith by the party in charge. Held that the sale was valid. *Gibson* v. *Lovell*, 19 Grant, 197. In delivering judgment, Mowat, V. C., said; "The principal ground of objection to Mr. Bacon's (the purchaser) claim was that the sale was void in equity by reason of the property having been in the custody of the Court through the receiver at the time of the sale. The answer to this objection is, neither the purchaser nor even the bailiff was informed of this until after the sale was completed. On the contrary, they had been expressly told, on what might well seem to them to be competent authority, that the engine and boiler (the goods and chattels sold) were not affected by the Chancery proceedings, and were not in the possession of the receiver." *Ib.* 202. And again: "No doubt, if the Court had been applied to before the sale, the bailiff's proceedings would have been restrained and nullified, because the Court does not permit any interference with property in the hands

Public notice of sale to be given, and in what manner.

127. The collector shall, by advertisement posted up in at least three public places in the township, village or ward wherein the sale of the goods and chattels distrained is to be made, give at least six days' (*v*) public notice of the time and place of such sale, and of the name of the person whose property is to be sold; (*w*) and, at the time named in the notice, the collector or his agents shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. (*x*) R. S. O. 1877, c. 180, s. 96.

Surplus, if unclaimed, to be paid to party in whose possession the goods were;

128. If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to the surplus is made by any other person, on the ground that the property sold belonged to him, or that he was entitled by lien or other right to the surplus, (*y*) such surplus shall be

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of its officers without the leave of the Court. But such leave, if asked for in the present case, would have been granted at once, unless the parties were prepared with the money. The knowledge of that was probably one reason why the plaintiff or her son did not apply to the Court before the sale." *Ib.* 203. The establishment in which these chattels were, being afterwards sold by the order of the Court in one lot as a going concern, it was held that the purchaser of such chattels at the tax sale was entitled to a corresponding part of the purchase money realized at the Chancery sale. *Ib.*

(*v*) At *least* six days', &c. See note *c* to sec. 115 of the Municipal Act.

(*w*) Errors or defects in the advertisement of sale would not, it is believed, affect the title of the purchaser to the goods and chattels purchased at the collector's sale. See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Patterson* v. *Todd*, 24 U. C. Q. B. 296; *Haslitt* v. *Hall*, *Ib.* 484; *Lee* v. *Howes*, 30 U. C. Q. B. 292; *Connor* v. *Douglas*, 15 Grant 456; *Gibson* v. *Lovell*, 19 Grant 197.

(*x*) The collector, after sale, would, it is apprehended, be in a position to sue the purchasers for the price of the things sold. See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282. But in order to bind the collector as against the purchaser, there should probably be some memorandum in writing on delivery of the goods sold, so as to bind the sale. See *Mingaye* v. *Corbett*, 14 U. C. C. P. 557. It is not necessary for the purchaser, in order to the maintenance of his title, to show a strict and literal compliance by the bailiff with the directions of the Act. *Gibson* v. *Lovell*, 19 Grant 197. See further, note *g* to sec. 122.

(*y*) The goods and chattels of *any* person in the possession of the person who ought to pay the taxes, sec. 124, or *any* goods on the land of a non-resident who has required his name to be entered on the roll, sec. 126, may be distrained and sold for taxes; but if there is a surplus, that surplus, if the goods and chattels were really not the property of the person for whose taxes they were sold, must

returned to the person in whose possession the property was when the distress was made. (*z*) R. S. O. 1877, c. 180, s. 97.

or to admitted claimant.

129. If such claim is made by the person for whose taxes the property was distrained, (*a*) and the claim is admitted, the surplus shall be paid to the claimant. (*b*) R. S. O. 1877, c. 180, s. 98.

When the right to such surplus contested.

130. If the claim is contested, such surplus money shall be paid over by the collector to the treasurer of the local municipality, who shall retain the same until the respective rights of the parties have been determined by action or otherwise. (*c*) R. S. O. 1877, c. 180, s. 99.

Recovery of taxes by action.

131. If the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs, as a debt due to the local municipality, (*d*) in which case the production of a

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belong to the owner of the goods and chattels so sold. It is hard that any part of his goods should be sold to pay the liability of another, with whom he has no privity, but it would be still harder if he could not claim any surplus left after payment of the taxes and costs.

(*z*) The receipt of the surplus by the owner of the goods would not, unless accepted in satisfaction, be any condonation, so as to prevent an action being brought to recover the value of the goods if the sale were from any cause illegal. See *Evans* v. *Wright*, 2 H. & N. 527; *Robinson* v. *Shields*, 15 U. C. C. P. 386.

(*a*) See note *y* to sec. 128.

(*b*) If the claim be disputed, the collector must pay over the money to the treasurer of the local municipality, who is to retain the same until the rights of the parties have been determined by action or otherwise. See. 130.

(*c*) It is not said that the collector, on payment to the treasurer, would be thereby discharged or relieved from acting at the suit of the rival claimants, or either of them—but such is the fair intendment of the section; and where the sale is legal, such would probably be the construction put upon the section by the Courts.

(*d*) The right to sue for taxes is, apparently, only given when the tax "cannot be recovered in any special manner provided by this Act,"—such as distress and sale in the case of resident taxpayers, and sale of lands in the case of non-resident proprietors who have requested their names to be put on the roll. *Berlin* v. *Grange*, 5 U. C. C. P. 211. When there is a sufficient distress on the property and the municipality by laches puts it out of its power to distrain, it seems that this section would not give a right of action. *Carson* v. *Veitch*, 9 O. R. 706. In order to entitle a municipal corporation to sue for a tax imposed in the ordinary manner upon resident rate-

copy of so much of the collector's roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the clerk of the local municipality, shall be *prima facie* evidence of the debt. (*e*) R. S. O. 1877, c. 180, s. 100. Evidence.

132. In towns, villages and townships every collector shall return his roll to the treasurer (*f*) on or before Collector to return his roll and pay

payers, the corporation must be able to show, in the first place, that the defendant's name is on the roll, see *Sargant* v. *Toronto*, 12 U. C. C. P. 185; *McCarral* v. *Watkins*, 19 U. C. Q. B. 248, and in the next place, that they have done what would be necessary to entitle them to distrain by warrant for the same tax, if the person sued had goods that might be seized, except perhaps there would be no occasion to make the previous demand mentioned in section 94, (124) *per* Robinson, C. J., in *London* v. *Great Western R. W. Co.*, 16 U. C. Q. B. 502; and neither by distress nor by action can a ratepayer be compelled to pay a tax of which such notice has not been given to him as the law has provided section 48 (47) of this Act. *Ib.* By this is not meant that the plaintiffs in such an action are bound to set forth in the declaration that they have given such notice as the law requires before the assessment roll was finally completed—that may perhaps be assumed till the contrary is shown—but it must be open to the defendant to deny that such notice was given and to put plaintiffs to the proof of it. *Ib.* In order to entitle the corporation to sue a non-resident owner of lands, it must not only appear that the special remedies provided by the Act are unavailable, and that the defendant's name is on the roll, but it must also be distinctly averred and proved that the owner had requested his name to be placed on the roll. *Berlin* v. *Grange*, 1 E. & A. 279.

(*e*) No proof of the signature of the clerk is apparently made necessary. If the certificate produced purports to be signed by him, it will be received on production. But when received, it is only *prima facie* evidence; in other words, its accuracy, or the facts it represents, may be disproved. See *Hesketh* v. *Ward*, 17 U. C. C. P. 190. See also sec. 66.

(*f*) It is the duty of the collector, under this section, on or before, a day named or appointed for the purpose, not later than the 1st of February, see note *g* to sec. 248 of the Municipal Act, to return his roll, and pay over the amount payable, specifying in a separate column on his roll how much of the whole amount is paid over on account of each separate rate. Does the collector at any time, and if so, when, become incapable of exercising his functions as collector? Suppose the municipal council does not extend the time beyond the 14th of December, does he on that day become *functus officio?* No doubt he may receive moneys on account of taxes after that day, provided he has not made his return, and no doubt his sureties would be liable for moneys so received. *Whitby* v. *Harrison* 18 U. C. Q. B. 606; *Todd* v. *Perry* 20 U. C. Q. B. 649. But whether he may exercise the *compulsory powers* with which he is invested, is another question. The enactments which provide for the appointment of collectors, see sec. 254 of the Municipal Act, and secs. 12 and 13 of this Act, contain no limitation as to the time they shall hold office;

over proceeds by the day to be appointed by Council.

the 14th day of December in each year, or on such day in the next year not later than the 1st day of February, as the council of the municipality may appoint, and shall pay over the amount payable to such treasurer, specifying in a separate column on his roll how much of the whole amount paid over is on account of each separate rate; (*g*) and shall make oath before the treasurer that the date of the demand of payment and transmission of statement and demand of taxes, required by sections 123 and 125 in each case, has been truly stated by him in the roll. R. S. O. 1877, c. 180, s. 101; 44 V. c. 25, s. 6.

Other persons may be employed to

133—(1) In case the collector fails or omits to collect the taxes or any portion thereof by the day appointed or to be

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and it is declared by sec. 279 of the Municipal Act, that all officers appointed by a council shall hold office until removed by the council. See *Beverley* v. *Barlow*, 7 U. C. L. J. 117; *In re McPherson and Beeman*, 17 U. C. Q. B. 99. The better opinion seems to be, that the collector does not become *functus officio* so long as he holds the office, and so long as his roll is not returned; in other words, that his authority to collect taxes on the roll is co-extensive with the term of his office, provided in the interval he has not returned his roll. The different provisions for the enlargement of the time for his making his return are in favour of the collector, and provisionally in favour of the ratepayers. This was the opinion of Robinson, C. J., and Burns, J., McLean, J., *dissentiente*, in *Newberry* v. *Stephens*, 16 U. C. Q. B. 65, and was in fact the decision of the Court in that case, since recognized in *McBride* v. *Gardham*, 8 U. C. C. P. 296; and *McLean* v. *Farrell*, 21 U. C. Q. B. 441. In *Coleman* v. *Kerr*, 27 U. C. Q. B. 5, Draper, C. J., said: "The Court acted upon *Newberry* v. *Stephens*, or at least in accordance with its principle, in *The Chief Superintendent of Schools* v. *Farrell*, 21 U. C. Q. B. 441; and the Court of Common Pleas recognized its authority in *McBride* v. *Gardham*, 8 U. C. C. P. 296. On these authorities we think this objection, the right to distrain after time fixed for return of the roll, is untenable."

(*g*) If a collector refuse or neglect to pay to the proper treasurer or other person legally authorized to receive the same, the sums contained in his roll, or duly account for the same as uncollected, then not only may the ordinary remedy by action against his sureties be applied, but the treasurer may, within twenty days after the time the payment ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county or city, as the case may be, commanding him to levy of the goods and chattels, lands, and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the treasurer the sum so unaccounted for, and to return the warrant within forty days after the date thereof. Sec. 231. The entries made by the collector on the roll of taxes paid are evidence against his sureties. *Welland* v. *Brown*, 4 O. R. 217.

collect taxes which Collector does not collect by a certain day.

appointed as in the last preceding section mentioned, the council of the town, village or township may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes. (*h*) R. S. O. 1877, c. 180, s. 102 (1); 44 V. c. 25, s. 6.

(2) No such resolution or authority shall alter or affect the duty of the collector to return his roll, (*i*) or shall, in any manner whatsoever, invalidate or otherwise affect the liability of the collector or his sureties. R. S. O. 1877, c. 180, s. 102 (2).

In cities the council may fix the time for return of collectors' rolls.

134. The council of every city may, by by-law, fix the times for the return of the collector's rolls and any enlargements of the same. (*j*) 44 V. c. 25, s. 6.

Proceedings when taxes are unpaid, and cannot be collected.

135. If any of the taxes mentioned in the collector's roll remain unpaid, and the collector is not able to collect the same, he shall deliver to the treasurer of his municipality an account of all the taxes remaining due on the roll; and, in such account, the collector shall show, opposite to each assessment, the reason why he could not collect the same by inserting in each case the words *Non-resident* or *Not sufficient property to distrain*, or *Instructed by Council not to collect*, as the case may be; (*k*) and such collector shall

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(*h*) This section is intended to give the council power, by resolution, to authorize the same collector, or any other person in his stead, *to continue* collections which are being made, but not completed, at the time appointed for the return of the collector's roll. The power, however, cannot be exercised *after the final return of the roll* by the collector, and after the lapse of several years. *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297; *Langford* v. *Kirkpatrick*, 2 A. R. 513. But the land is not thereby excused; the arrears of taxes are a special lien on the land. Sec. 137.

(*i*) See sec. 132 and notes thereto.

(*j*) See note *h supra*.

(*k*) It is the duty of the collector to return his roll by a day named or appointed for the purpose. See 132. It is also his duty under this section, when unable to collect any taxes, to deliver an account of all taxes remaining due on the roll, and in such account he is required to show the reason why he could not collect the same. If he fail in the performance of these duties, proceedings by action may be had against him, or his sureties and himself; proceedings also of a very summary character. See sec. 231. If these remedies be of no avail,

at the same time furnish the clerk of the municipality with a duplicate of such account, and the clerk shall, upon receiving such account, mail a notice to each person appearing on the roll with respect to whose land any taxes appear to be in arrear for that year. R. S. O. 1877, c. 180, s. 103; 49 V. c. 38, s. 9.

When thus not collected, collectors to be credited with amount

136. Upon making oath before the treasurer that the sums mentioned in such account remain unpaid, and that he has not, upon diligent enquiry, been able to discover sufficient goods or chattels belonging to or in possession of the persons charged with or liable to pay such sums, or on the premises belonging to or in the possession of any occupant thereof, whereon he could levy the same, or any part thereof, the collector shall be credited with the amount not realized. (*l*) R. S. O. 1877, c. 180, s. 104.

Taxes to be a lien upon land.

137. The taxes accrued on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrance of any party except the Crown, and shall not require registration to preserve it. (*m*) R. S. O. 1877, c. 180, s. 105.

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then Court may interfere by *mandamus*. *In re Quin and the Treasurer of the Town of Dundas*, 23 U. C. Q. B. 308.

(*l*) This appears to intend that the proper course is for the municipal council in the first instance to debit the collector with all the taxes on his roll, and from time to time, as he pays over moneys credit him therewith, until he find himself unable to collect the balance, and then accept from him the oath here required, and credit him with the amount not realized, so as to close the account.

(*m*) The effect of this provision makes it necessary for every intending purchaser to search not only the registry office for deeds or conveyances affecting land, but the office of the county or other treasurer who would be able to give information as to the taxes, if any, due upon it. See remarks of Burns, J., in *Holcomb* v. *Shaw*, 22 U. C. Q. B. 104. But apparently it is no part of a solicitor's duty, under an ordinary retainer, for the investigation of title, to make such a search. *Ross* v. *Strathy*, 16 U. C. Q. B. 430. The lien is not only made special, but one having preference over any claim, lien, privilege or incumbrance of any party except the Crown; but even in the case of the Crown, if the lien have attached before the Crown became the owners of the land, the lien holds as against the Crown. *Per* Adam Wilson, J., in *Secretary of War* v. *Toronto*, 22 U. C. Q. B. 555; see further, *Stokes* v. *State of Georgia*, 12 Am. 590. Taxes due upon land at the time of sale are an incumbrance within the covenant for quiet enjoyment. *Haynes* v. *Smith*, 11 U. C. Q. B. 571; *Harry* v. *Anderson*, 13 U. C. C. P. 476; see also, *Richard* v. *Bent*, 14 Am. 1. But where the vendee of land subject to taxes allows it to be sold for

YEARLY LISTS OF LANDS GRANTED BY THE CROWN.

138. The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the treasurer of every county a list of all the land within the county patented, located as free grants, sold or agreed to be sold by the Crown, or leased, or appointed to any person, or in respect of which a license of occupation issued during the preceding year. (*n*) R. S. O. 1877, c. 180, s. 106. *See also Rev. Stat.* c. 24, s. 36. Annual lists of lands granted, etc. to be furnished by Commissioner of Crown Lands.

139. The county treasurer shall furnish to the clerk of County treasurers to fur-

taxes, and afterwards neglects to redeem, he cannot as of right recover damages to the full value of the land. *McCollum* v. *Davis*, 8 U. C. Q. B. 150. Taxes cannot be said to be due before they are imposed by the council. *Ford* v. *Proudfoot*, 9 Grant 478; *Kempt* v. *Parkyn*, 28 U. C. C. P. 129. In the case of residents, taxes are not due till the collector has received his roll. *Corbett* v. *Taylor*, 23 U. C. Q. B. 454, and not until the expiration of fourteen days after demand, *per* Wilson, J., in *Bell* v. *McLean*, 18 U. C. C. P. 421; and in the case of non-residents who have required their names to be entered on the roll, not until one month after the collector has returned his roll. *Ib.* Sewerage rate is not an incumbrance on land. *Moore* v. *Hynes*, 22 U. C. Q. B. 107. See further *In re McCutchon and Toronto*, 22 U. C. Q. B. 613.

(*n*) Unpatented land, sold or agreed to be sold to any person, or located as a free grant, so far as the interest of the purchaser or locatee is concerned, is made liable to taxation. Sec. 159. For the purposes of assessment, the motive for requiring a return to the treasurers of counties of lands located as free grants, sold or agreed to be sold or leased by the Crown, or in respect of which a license of occupation has issued, is self-evident. *Per* Draper, C. J., in *Street* v. *Kent*, 11 U. C. C. P. 260. When *Street* v. *Kent*, was decided, the assessment law had not been extended to lands "sold or agreed to be sold." That was done by the statute 27 Vict. c. 19, ss. 9, 10, 11, which has been embodied in this section. See *Street* v. *Simcoe*, 12 U. C. C. P. 284; *Street* v. *Lambton*, *Ib.* 294. Under the old law the schedule of the Surveyor general was the foundation of all subsequent proceedings. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 598, and it was necessary that the land sold for taxes should be stated on the list to have been described as granted or leased. *Doe Bell* v. *Orr*, 5 O. S. 433. Land not contained in the list was held not to be taxable, *Peck* v. *Munro*, 4 U. C. C. P. 363, and the list might be shown to be erroneous. *Perry* v. *Powell*, 8 U. C. Q. B. 251; *Street* v. *Kent*, 11 U. C. C. P. 255; *O'Grady* v. *McCaffray*, 2 O. R. 309. Land returned in June, 1820, for assessment, was held to be liable for the taxes for the whole of that year. *Doe d. Stata* v. *Smith*, 9 U. C. Q. B. 658. A sale of land described as granted was held entitled to prevail against a subsequent patentee. *Charles* v. *Dulmage*, 14 U. C. Q. B. 585; *Ryckman* v. *Voltenburg*, 6 U. C. C. P. 385. See *Moffatt* v. *Scratch*, 8 O. R. 147; 12 A. R. 157.

nish copies of lists to clerks of municipalities.

each local municipality in the county a copy of the said lists, so far as regards lands in such municipality, and such clerk shall furnish the assessors respectively with a statement shewing what lands in the said annual list are liable to assessment within such assessor's assessment district. (*o*) R. S. O. 1877, c. 180, s. 107.

ARREARS OF TAXES.

Duties of Treasurers, Clerks, and Assessors, in relation thereto.

Lists of lands three years in arrears for taxes to be furnished to clerks.

140. The treasurer of every county shall furnish to the clerk of each municipality, except cities and towns, in the county, and the treasurer of every city and town shall furnish to the clerk of his municipality, a list of all the lands in his municipality, in respect of which any taxes have been in arrear for the three years next preceding the 1st day of January in any year; (*p*) and the said list shall be so furnished on or before the 1st day of February in every year, (*q*) and shall be headed in the words following: "*List of lands liable to be sold for arrears of taxes in the year* 18 ;" (*r*)

(*o*) The county treasurer is made the medium of communication between the Government and the officers of the local municipalities. The officers for whom the information is really designed, and who will make the necessary use of it, are the local assessors.

(*p*) "In respect of which any taxes shall have been in arrears," &c. See note *f* to sec. 160.

(*q*) "*On or before the first day of February.*" It is by sec. 163 declared that the treasurer shall not sell any lands which have not been included in the lists furnished by him to the clerks of the several municipalities *in the month of February* preceding the sale. In *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 289, Hagarty, C. J., said: "Even if we found is clearly proved (which it is not) that the list was not furnished until *after* the 1st of February, we should hold that its being furnished any time *during* February would be sufficient under these two sections," secs. 150, 163.

(*r*) This section gives the heading that is to be on the list. It does not state in terms that the *amount of taxes in arrear* should be stated on the list. *Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289. Land described as "9 con. S. *or* E. ½ 14, N. *or* W. ½ 14." was held to be a sufficient description of land liable to be sold for arrears of taxes on the list. *Ib.* *Per* Hagarty, C. J.: "I see no objection to calling it North or West half. The land probably lies North-west or South-east, and nothing was shown that the description would not sufficiently identify it." See also, *Beckett* v. *Johnston*, 32 U. C. C. P. 301.

and, for the purposes of this Act, the taxes for the first year of the three which have expired under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for three years, although the same may not have been placed upon a collector's roll until some month in the year later than the month of January. (*s*) R. S. O. 1877, c. 180, s. 108.

Local clerks to keep the lists in their offices open to inspection, give copies to assessors, notify occupants, etc.

141. The clerk of the municipality is hereby required to keep the said list, so furnished by the treasurer, on file in his office, subject to the inspection of any person requiring to see the same, and he shall also deliver to the assessor or assessors of the municipality, in each year, as soon as such assessor or assessors are appointed, a copy of such list; (*t*) and it shall be the duty of the assessor or assessors to ascertain if any of the lots or parcels of land contained in such list are occupied, or are incorrectly described, and to notify such occupants and also the owners thereof, if known whether resident within the municipality or not, upon their respective assessment notices, that the land is liable to be sold for arrears of taxes, and enter in a column (to be reserved for the purpose) the words "*Occupied and Parties Notified*," or "*Not Occupied*," as the case may be; (*u*) and all such lists shall be signed by the assessor or assessors and returned to the clerk with the assessment roll, together with a memorandum of any error discovered therein, (*v*) and the clerk shall file the same in his office for public use; (*w*) and every such

Lists to be evidence.

(*s*) See note *g* to sec. 160. Where the treasurer had neglected to furnish the clerk of the municipality with a list of lands liable to sale for taxes, and no such list or copy thereof was delivered to the assessor, as provided by section 141, and by reason thereof a lot worth $1,500 or $1,600 was sold for $5.53 taxes due thereon, the sale was set aside. *McKay* v. *Ferguson*, 26 Grant 236. A substantial compliance with this and the three following sections, is a condition precedent to the right to sell non-resident land for taxes. *Per* Armour, J., in *Deverill* v. *Coe*, 11 O. R. 222.

(*t*) See note *s supra*.

(*u*) Where though the owner was known he was not notified as required by this section it was held that the defect was not cured by sec. 188. *Haisley* v. *Somers*, 13 O. R. 600; 15 O. R. 275.

(*v*) See *Stewart* v. *Taggart*, 22 U. C. C. P. 290. *Besides* the duties here specified the assessors must attach to the list a certificate signed by them, and verified by oath or affirmation. Sec. 142. Neglect of any of those duties may be summarily punished. See sec. 147.

(*w*) Not only is the clerk to file in his office the original list,

list, or copy thereof, shall be received in any Court as evidence in any case arising concerning the assessment of such lands. (*x*) R. S. O. 1877, c. 180, s. 109. See sec. 204.

Assessor's certificate.

142. The assessors shall attach to each such list (*y*) a certificate signed by them, and verified by oath or affirmation. (*z*) in the form following :—(*a*)

"I do certify that I have examined all the lots in this list named; and that I have entered the names of all occupants thereon, as well as the names of the owners thereof, when known : and that all the entries relative to each lot are true and correct, to the best of my knowledge and belief."

R. S. O. 1877, c. 180, s. 110.

Local clerks to certify lands which have become occupied.

143—(1) The clerk of each municipality shall examine the assessment roll when returned by the assessor, and ascertain whether any lot embraced in the said list last received by him from the treasurer pursuant to section 140, is entered upon the roll of the year as then occupied, or is incorrectly described ; and shall forthwith furnish to the said treasurer a list of the several parcels of land which appear on the resident roll as having become occupied, or which have been returned by the assessor as incorrectly described.

Return of taxes due to be made to treasurer.

(2) Except in the cases provided for by sections 52 and 54 on or before the 1st day of July in the then current year, the county treasurer shall return to the clerk of each local municipality other than a city or town, and every city or town treasurer shall return to the clerk of the city or town, an account of all arrears of taxes due in respect of such occupied lands, including the per-centage chargeable under section 157 of this Act. (*b*)

"subject to the inspection of any person requiring to see the same," see note *v* to this section, but to file the signed copies returned to him by the assessors "for public use."

(*x*) The list or copy thereof shall be received in evidence. The provision is not for the admission of a certified copy in evidence on its production, as in sec. 131.

(*y*) *Such list.* See note *r* to sec. 140.

(*z*) The oath or affirmation may, it is presumed, be made before the head or other members of the council. See note *m* to sec. 276 of the Municipal Act.

(*a*) See note *r* to sec. 330 of the Municipal Act.

(*b*) The list furnished by the local clerk, under the preceding part

(3) The clerk of each municipality shall, in making out the collector's roll of the year, add such arrears of taxes to the taxes assessed against such occupied lands for the current year; and such arrears shall be collected in the same manner and subject to the same conditions as all other taxes entered upon the collector's roll. (*c*) R. S. O. 1877, c. 180, s. 111.

Clerk to insert such amount on Collector's roll.

144. If there is not sufficient distress upon any of the occupied lands, in the preceding section named, to satisfy the total amount of the taxes charged against the same, as well for the arrears as for the taxes of the current year, the collector shall so return it in his roll to the treasurer of the municipality, shewing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. (*d*) R. S. O. 1877, c. 180, s. 112.

When there is not sufficient distress on such lands.

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of this section, to the county treasurer, is to enable the latter to report the arrears and per centage due in respect of non-resident land since become occupied, with a view to the collection of taxes thereon by distress and sale of goods and chattels of the occupant.

(*c*) The arrears may be collected in the *same manner*, and *subject to the same conditions*, as all *other* taxes upon the collector's roll. It is provided by sec. 124, that the collector may, after demand, levy the taxes with costs by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the county, &c.; and by sec. 126, in the case of non-residents who have required their names to be entered on the roll the collector may make distress of any goods and chattels which he may find on the land. There is no doubt, therefore, that goods and chattels on the land, as in the case of non-resident lands, would be liable. But the difficulty of restraining the operation of the section to goods and chattels on the land, as in the case of non-residents, is, that that is only one kind of tax, and the Act says the taxes shall be collected in the same manner and *subject* to the same conditions as *all* other taxes entered upon the roll. Now, upon the roll are the proper taxes of the party charged, which, under sec. 124, may be levied of any goods and chattels in his possession, *wherever the same may be found in the county*. The Court of Queen's Bench, however, have placed upon similar words in the statute 27 Vict. c. 19, from which this section is taken, the narrow construction of restricting the remedy to goods and chattels on the land, as being more consistent with reason than the broader construction, which would work great hardships and do great injustice in individual cases, see *Warne* v. *Coulter*, 25 U. C. Q. B. 177; and this construction is apparently sanctioned by the Legislature in the following section, which provides what the collector shall do "if there shall not be sufficient distress upon any of the occupied lands in the preceding section named," &c.

(*d*) The effect of secs. 141 to 144 seems to be, that the fact of the land being in arrear and liable to be sold shall be communicated

Statement of arrears to be returned by local Treasurer, and when.

145—(1) The treasurer of every township and village shall, within fourteen days after the time appointed for the return and final settlement of the collector's roll, (*e*) and before the 8th day of April in every year, (*f*) furnish the county treasurer with a statement of all unpaid taxes and school rates directed in the said collector's roll or by school trustees to be collected.

(2) Such returns shall contain a description of the lots or parcels of land, a statement of unpaid arrears of taxes, if any, and of arrears of taxes paid, on lands of non-residents which have become occupied, as required by section 141, of this Act, and generally such other information as the county treasurer may require and demand in order to enable him to ascertain the just tax chargeable upon any land in the municipality for that year; and the county treasurer shall not be bound to receive any such statement after the 8th day of April, in each year. R. S. O. 1877, c. 180, s. 113.

Liability of lands to sale if arrears are not paid, and when.

146. In case it is found by the statement directed by the last preceding section to be made to the county treasurer, that the arrears of taxes upon the occupied lands of non-residents, directed by section 143, of this Act to be placed on the collector's roll, or any part thereof, remain in arrear, such land shall be liable to be sold for such arrears, and shall be included in the next or ensuing list of lands to be sold by the county treasurer, under the provisions of section 160, of this Act, notwithstanding that the same may be occupied in the year when such sale takes place; and such arrears shall not again be placed upon the collector's roll for collection. (*g*) R. S. O. 1877, c. 180, s. 114.

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by the county treasurer to the township clerk, who shall give a copy of the list to the assessors, who shall ascertain if any of the lots named are occupied, and notify the occupants and owners, if known, that the land is liable to be sold for arrears of taxes, and enter in a column, "Occupied, and parties notified," or "Not occupied." The clerk is then to ascertain if any lot in the list is entered as occupied. He shall notify the treasurer thereof, and the latter, by the first of July, shall return to the clerk an account of all arrears of taxes due in respect of such occupied lands, and the clerk shall then put the amounts in the collector's roll for the year, to be collected, &c. *Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 290.

(*e*) See as to computation of time, note *b* to sec. 185 of the Municipal Act.

(*f*) See note *f* to sec. 160.

(*g*) The ordinary way of realizing taxes on non-resident lands,

Penalty on Clerks and Assessors neglecting duties under preceding sections.

147. If the clerk of any municipality neglects to preserve the said list of lands in arrears for taxes, furnished to him by the treasurer, in pursuance of section 140, or to furnish copies of such lists, as required, to the assessor or assessors, or neglects to return to the treasurer a correct list of the lands which have come to be occupied, as required by section 143 of this Act, and a statement of the balances which remain uncollected on any such lots, as required by section 144 of this Act; (*h*) or if any assessor or assessors neglect to examine such lands as are entered on each such list, and make returns in manner hereinbefore directed, (*i*) every officer making such default shall, on summary conviction thereof before any two Justices of the Peace having jurisdiction in the county in which such municipality is situated, be liable to the penalties imposed by sections 225, 226 and 227 of this Act; all fines so imposed shall be recoverable by distress and sale of any goods and chattels of the party making default. (*j*) R. S. O. 1877, c. 180, s. 115.

How to be levied.

After return of roll who to receive taxes.

148—(1) After the collector's roll has been returned to the treasurer of a township or village, and before such

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where the owners are not rated at their own request, is by sale of the lands. *Per* Richards, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 211. But in aid of this remedy, provision is made in the 144th and subsequent sections, for distress of goods and chattels on the lands, when subsequent to the accruing of the arrears they become occupied. If the latter fail, the only course left for the county treasurer is to fall back upon the principal and ordinary remedy, and that is all that this section directs.

(*h*) The duty to preserve the list and furnish copies to the assessors is imposed by sec. 141.

(*i*) The duty of the assessors to examine the lands and to make a return thereof is also imposed by sec. 141. See further, note *d* to sec. 144.

(*j*) The fine under sec. 225 is a sum not exceeding $100, and the punishment under sec. 227 a fine not exceeding $200, and imprisonment until the fine is paid, or imprisonment for a term not exceeding six months, or both fine and imprisonment in the discretion of the court; and under this section, though not according to the sections mentioned, the fines and penalties may be imposed on conviction before any two justices having jurisdiction in the county in which the municipality is situate. This section "imposing penalties upon defaulting clerks and assessors who fail to carry out the statutory directions regarding the list of lands liable, affords suggestive evidence that this is the remedy intended by the legislature, and not the avoiding of the tax sale and deed, at all events after two years." *Smith* v. *Midland Railway*, 4 O. R. 494, 500.

treasurer has furnished the statement to the county treasurer mentioned in section 145, arrears of taxes may be paid to such local treasurer; but after the said statement has been referred to the county treasurer, no more money on account of the arrears then due shall be received by any officer of the municipality to which the roll relates. (*k*)

After statement under sec. 145, collection of arrears to belong to County Treasurer only.

(2) The collection of the arrears shall thenceforth belong to the treasurer of the county alone, (*l*) and he shall receive payment of such arrears, and of all taxes on lands of non-residents, and he shall give a receipt therefor specifying the amount paid, for what period, the description of the lot or parcel of land, and the date of payment in accordance with the provisions of section 205 of this Act. (*m*) R. S. O. 1877, c. 180, s. 116.

Municipalities may remit taxes due on non-residents' lands.

149. Any local municipality may, by by-law, remit, either in the whole or in part, any taxes now due or to become due upon the lands of non-residents within such municipality, specifying the particular lands upon which the remission is made; (*n*) and, upon the passing of such by-law, it shall be

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(*k*) The collection thenceforth belongs to the treasurer of the county alone, sub-s. 2, and any distress or other proceeding on the part of the local municipality for the recovery of the taxes, unless in cases coming under secs. 141 and 143, would be illegal. *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. It would seem that the roll should not only be returned by the collector to the clerk of the local municipality, but that the latter should return it to the county treasurer. See sec. 152.

(*l*) After the return of the collector's roll, the duty of collecting is cast upon the treasurer of the county, and upon him *alone*. The council of the county has no control over him so far as this duty is concerned. See note *a* to sec. 119. In cases of non-resident lands subsequently becoming occupied, he may make use of the officers of the local municipality in order, if possible, to make the amount of the taxes by distress of goods and chattels on the land. See secs. 141 and 143, and notes thereto.

(*m*) It having been declared that the collection of the arrears shall, after the return of the collector's roll, belong to the treasurer of the county alone, he and he alone is the proper person to receive payment of arrears on lands of non-residents.

(*n*) The rule is, that after the return of the collector's roll, the collection of arrears of taxes appertains to the treasurer of the county alone. This being so, unless there were some provision made to the contrary, neither the council of the county nor the council of the local municipality could legally, interfere with the proper performance of that duty. But as the taxes when collected become and are the property of the local municipality, it has been deemed right that the

the duty of the clerk forthwith to transmit a copy of the by-law to the treasurer or other officer having the collection of such arrears, (*o*) who shall then collect only so much of said taxes as are not remitted. R. S. O. 1877, c. 180, s. 117.

The whole amount to be paid at once, unless the land is subdivided.

150. The treasurer shall not receive any part of the tax charged against any parcel of land unless the whole of the arrears then due is paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof; but if satisfactory proof is adduced to him that any parcel of land on which taxes are due has been sub-divided, he may receive the proportionate amount of tax chargeable upon any of the sub-divisions, and leave the other sub-divisions chargeable with the remainder; (*p*) and the treasurer may, in his books, divide any piece or parcel of land which has been returned to him in arrear for taxes, into as many parts as the necessities of the case may require. (*q*) R. S. O. 1877, c. 180, s. 118.

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council of the local municipality shall have power, in some cases, to remit taxes, in whole or in part, due on the land of non-residents. This power can only be exercised by by-law. When so exercised, a certificate of the fact must be sent to the county treasurer for his guidance. The duty, of course, remains to collect the balance not remitted.

(*o*) As the collection of the taxes after the return of the roll appertains to the treasurer *alone* it is not easy to understand the "other officer having the collection of arrears," to whom reference in here made. It may be intended to refer to the collector before the return of his roll. But the first part of the section deals only with the case of the return of the roll. This part, instead of being merely, as it were, an exception to the first part of the section, may be read as an independent section, covering ground not covered by the first part of the section.

(*p*) The proof in each case is to be such as to satisfy the treasurer; *i.e.*, be satisfactory *to him*. It is presumed that reasonable proof will be deemed satisfactory. It is not supposed that any public officer will act otherwise than reasonably in the discharge of any duty cast upon him by virtue of his office. If the proof offered be a paper purporting to be a receipt of a collector, school trustee or other municipal officer, the treasurer is not to accept such proof until he has received a report upon the same from the clerk of the municipality interested, certifying the correctness thereof. Sec. 156. See *Hall* v. *Farquharson*, 12 O. R. 598.

(*q*) The receipt of a proportion of taxes because of a sub-division, and in respect of a sub-divided part, obliges the treasurer to charge the remaining sub-divided parts with the remainder of the amount of taxes, and, if convenient or necessary for that purpose, to divide the entries of the parcel of land in his books, and he is here

If demanded, Treasurer to give a written statement of arrears.

151. The treasurer shall, on demand, give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge twenty cents for the search of each separate lot or parcel not exceeding four, and for every additional ten lots, a further fee of twenty cents; but the treasurer shall not make any charge for search to any person who forthwith pays the taxes. (*r*) R. S. O. 1877, c. 180, s. 119.

Lands on which taxes unpaid to be entered in certain books by treasurer.

152. The treasurer of every county shall keep a separate book for each township and village, in which he shall enter all the lands in the municipality on which it appears from the returns made to him by the clerk and from the collector's roll returned to him, that there are any taxes unpaid, and the amounts so due; and he shall, on the 1st day of May in every year, complete and balance his books by entering against every parcel of land, the arrears, if any, due at the last settlement, and the taxes of the preceding year which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. (*s*) R. S. O. 1877, c. 180, s. 120.

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authorized to do so. See *In re Secker and Paxton*, 22 U. C. Q. B. 118. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, 451, Draper, C. J., in delivering the judgment of the Court said: "It appears to me that under the 113th section (same as this section) of the Assessment Act when satisfactory proof is adduced to the treasurer that an entire lot has been sub-divided, that officer must adjudge the question of sub-division, and, finding the fact established, he has the *right* to receive the proportionate sum of the taxes due on the whole in discharge of the particular sub-division so ascertained. When he has in good faith determined that the lot has been sub-divided, and then received the due proportion of the taxes, the sub-division is as much discharged from the incumbrance as if the taxes on the entire lot had been paid." See further, *Brooke* v. *Campbell*, 12 Grant 526; *Stewart* v. *Taggart*, 22 U. C. C. P. 284. The section has been held to apply to the receipt of a proportionate part of the redemption money after a sale of the whole lot for taxes. See notes to sec. 180.

(*r*) The treasurer is not bound to submit to the demand of any person, whether interested or not, requiring a statement of arrears of taxes on any particular parcel or parcels of land. But it is his duty to submit to the demand of the owner (or his agent, which is the same thing), and to give him a written statement of the arrears to date, provided his fees for search (there being no fee for certificate or statement) be paid or tendered, *or* provided the person making the demand be authorized to do so and *forthwith* pay the taxes.

(*s*) The books, when correctly kept, are evidence of the taxes being in arrear, on ejectment brought for the recovery of the land by a vendee on a sale for taxes. See *Hall* v. *Hill*, 22 U. C. Q. B. 578.

Municipalities united and afterwards disunited, etc.

153. If two or more local municipalities, having been united for municipal purposes, are afterwards disunited, or if a municipality or part of a municipality is afterwards added to or detached from any county, or to or from any other municipality, the treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land, at the date of the alteration, shall be placed to the credit of the municipality within which the land, after such alteration, is situate. R. S. O. 1877, c. 180, s. 172, *part.*

Proceedings where any land is found not to have been assessed in any year.

154. If, at the yearly settlement to be made on the 1st day of May, it appears to the treasurer that any land liable to assessment has not been assessed, he shall report the same to the clerk of the municipality; thereupon, or if it comes to the knowledge of the clerk in any other manner that such land has not been assessed, the clerk shall, under the direction of the council, enter such land on the collector's roll next prepared by him thereafter, or on the roll of non-residents, as the case may be, as well for the arrears omitted of the year preceding only, if any, as for the tax of the current year; and the valuation of such land so entered shall be the average valuation of the three previous years, if assessed for the said three years, but if not so assessed, the clerk shall require the assessor or assessors for the current year to value such lands; and it shall be the duty of the assessor or assessors to value such lands when required, and certify the valuation in writing to the clerk; (*t*) and the owners of such lands shall have the right to appeal to the council at its next or some subsequent meeting after the taxes thereon have been demanded, but within fourteen days after such demand which demand shall be made before the 10th day of November; and the council shall hear and determine such appeal on some day not later than the 1st day of December. (*u*) R. S. O. 1877, c. 180, s. 121.

How land to be valued.

Appeal from valuation.

(*t*) The object of this section is to make subject to taxes land that ought to have been, but which, from some cause, was not assessed. The procedure provided for the purpose is the best, under the circumstances, that could be devised, to meet the exigencies of such a case. The treasurer may at any time correct clerical errors. See sec 155.

(*u*) It will be observed the appeal is given direct to the council. The demand for payment of taxes must be made by the collector before the 10th of November, and the appeal must be made within

Treasurer to correct errors.

155. The country treasurer may correct any clerical error which he himself discovers, from time to time, or which may be certified to him by the clerk of any municipality. (*v*) R. S. O. 1877, c. 180, s. 122.

As to pretended receipts, etc.

156. If any person produces to the treasurer, as evidence of payment of any tax, any paper purporting to be a receipt of a collector, school trustee, or other municipal officer, he shall not be bound to accept the same until he has received a report from the clerk of the municipality interested, certifying the correctness thereof, or until he is otherwise satisfied that such tax has been paid. (*w*) R. S. O. 1877, c. 180, s. 123.

Ten per cent. to be added to arrears yearly.

157. If, at the balance to be made on the 1st day of May in every year, it appears that there are any arrears due upon any parcel of land, the treasurer shall add to the whole

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fourteen days after demand, or it cannot be made at all. See as to computation of time, note *b* to sec. 185 of the Municipal Act.

(*v*) A ratepayer from 1858 to 1861 inclusive, occupied as a lessee a house and land adjoining on lot 24, part of which lot, in 1854, had been laid out by his landlord into village lots, and a plan of the subdivisions filed in the registry office. He had been regularly assessed, and had paid for the premises thus occupied by him, but the whole of lot 24 had, during these four years, been returned as non-resident. After the treasurer had issued his warrant for sale to the sheriff, he was applied to to correct the alleged mistake in the rolls, so as to except the part occupied from that returned, but refused to do more than allow the sheriff to deduct the amount paid by the ratepayer. A certificate was presented to the township clerk for signature, to be addressed to the treasurer, with a view of notifying him of certain errors in the mode of assessment of the lot No. 24, but the clerk declined to sign it, alleging that he did not think he would be justified in doing so. The Court, on the application for a *mandamus*, refused to interfere. *In re Secker and Paxton*, 23 U. C. Q. B. 118. Where there are errors in non-resident land assessments, the treasurer is not bound by the roll, but can receive evidence and correct errors therein. Under the circumstances appearing in this case it was held that, on "satisfactory proof" being made of the facts, it would have been the duty of the treasurer to stay the sale at all hazards, and, if so, it was the duty of the court to interfere. The Act recognizes the possibility of evidence being given to evade or neutralize entries upon the roll and official books. *Hall* v. *Farquharson*, 12 O. R. 598.

(*w*) Before the treasurer is to give any credit for taxes, he must be satisfied by evidence of the payment. The production of a paper *purporting* to be a receipt for the taxes is *some* evidence of payment. But the treasurer must be satisfied of the genuineness of the receipt, and of the fact that the taxes really were paid. The receipt, even if genuine, is not conclusive evidence of payment. See note *p* to sec. 150.

amount then due ten per centum thereon. (*x*) R. S. O. 1877, c. 180, s. 124.

158. Where the county treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, (*y*) in a township or village municipality, he may issue a warrant under his hand and seal to the collector of

When there is distress upon lands of non-residents, Treasurer

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(*x*) Under sec. 152 the treasurer is required to keep books, in which he shall enter all the lands on which it appears from the clerk's return and the collector's rolls there are any taxes unpaid, and *the amount so due*. On the 1st of May in every year, he is to complete and balance his books by entering against every parcel of land the *arrears*, if any, at the last settlement, and the taxes of the preceding year *which remain unpaid*, and he is to ascertain and enter in his books the *total amount* of arrears, if any, chargeable upon the land at that date. By this section, if, at the balance to be made on the 1st of May in every year, it appears that there are *any arrears* due upon any parcel of land, he is required to *add* to the *whole amount then due* ten per centum thereon. In *Gillespie* v. *Hamilton*, 12 U. C. C. P. 427, Draper, C.J., said, p. 429: I think the Legislature have used language very clearly indicating an intention that ten per cent. should be added every year, calculated on the whole amount which is in arrear and due upon the lands at the time the charge is made. In the present case the lands were liable to satisfy a given sum on 1st of May, 1862, which sum included taxes for preceding years and ten per cent. added thereto at the preceding 1st of May. To that sum, which constituted the whole amount due on the lands, the statute, as I read it, directs that ten per cent. should be added." By 51 Vict. c. 57, sec. 3, this section is "declared to apply and to have always applied to the municipalities of Shuniah and Neebing, and to the town of Port Arthur."

(*y*) It is not made the duty of the treasurer to search for a distress on lands; but if satisfied there is a distress, he may issue a warrant of distress. In order, to render the treasurer liable for not making a distress, it would be necessary to aver and prove that he had notice of the distress. See *Foley* v. *Moodie*, 16 U. C. Q. B. 254. The neglect of a collector whose duty it was to search for distress, was held not to invalidate a sale subsequently made of the land for arrears that might in whole or in part have been satisfied by such distress. *Allen* v. *Fisher*, 13 U. C. C. P. 63. The old law was formerly otherwise, especially if it could be shewn that there was a sufficient distress on the land at the time of the sale. See *Doe Bell* v. *Reaumore*, 3 O. S. 242; *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Dobie* v. *Tully*, 10 U. C. C. P. 432. But proving that there were a few pieces of timber on the lot, cut down by trespassers, and left by them to be prepared for market in a lot, or that persons were in the habit of making sugar on the lot, leaving kettles and sap-troughs thereon, was held not sufficient evidence of a distress being on the land to invalidate the sale. See *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Doe d. Powell* v. *Rorison*, 2 U. C. Q. B. 201; *Fraser* v. *Mattice*, 19 U. C. Q. B. 150. The old law was altered by the statute

may authorize collector to levy.

such municipality, (*z*) who shall thereby be authorized to levy the amount due, upon any goods and chattels found upon the land, in the same manner, and subject to the same provisions, as are contained in sections 124 to 130 inclusive of this Act, with respect to distresses made by collectors. (*a*) R. S. O. 1877, c. 180, s. 125.

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13 & 14 Viet. c. 67. See *Hamilton* v. *McDonald*, 22 U. C. Q. B. 136; *McDonell* v. *McDonald*, 24 U. C. Q. B. 74; *Weegen* v. *McDiarmid*, 12 U. C. C. P. 499. In *Allan* v. *Fisher*, 13 U. C. C. P. 70, Draper, C. J., said: "It appears to me impossible to hold that the collector's neglect to search for goods which with diligence he might have found, or to enquire with sufficient care for the address of the party assessed on his roll, in order to transmit a statement to him by post, under the 41st section can have that effect." This was quoted approvingly in *Bank of Toronto* v. *Fanning*, 17 Grant 517. In *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 288, Hagarty, C. J., said: "I am of opinion that if the land was assessed and the taxes in fact unpaid, an omission by the collector to levy the amount from property which, by due diligence, he might have found liable thereto, cannot, in the present state of the law, avoid the sale. It cannot be, in my judgment, that the validity of the sale is to be dependent on the diligence or want of diligence in a collector in some previous year." In *Allan* v. *Fisher*, 13 U. C. C. P. 63, it was, however, held that when the lot was occupied and the owner known, and full distress thereon, it was the duty of the assessor to enter the owner's name, and the name also of the known occupant. Instead of this, he entered the lot on the roll as land of a non-resident, without any name. The result was that during that year no officer but the treasurer could receive the rates, and would be the only officer who could distrain, and the court held the assessment for that year bad, and avoided the sale. Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289, referring to the decision on this point, said: "This decision was in 1863, under (apparently) 16 Viet. c. 182. The present case is very different. The assessments for 1865, 1866 and 1867, are, I think, regular for reasons stated. In 1868, the first year that distress is alleged to have been on the lot, Stewart was the person assessed, and was on the resident roll, and returned as not collected on the absentee list. Therefore it seems to fall within the case of *Allan* v. *Fisher*, as being merely a case of neglect to search for distress or to notify the absent owner. The omission of duty did not, as in the case cited, cause the land to be placed on the non-resident roll, and thus take the collection out of the hands of the local officer."

(*z*) Where the warrant was tested "Given under my hand and seal, being the corporate seal," and the seal bore the same form, emblem, legend, &c., as the county seal, it was held that the county was not liable in trespass or trover. *Snider* v. *Frontenac*, 30 U. C. Q. B. 275.

(*a*) The power of the county treasurer by warrant to levy is limited to non-resident lands, so long as they remain as such under his control. That control ceases as soon as, under the provisions of the 141st and following sections, it becomes his duty to take the steps

159. Unpatented land vested in or held by Her Majesty which may be hereafter sold, or agreed to be sold, to any person, or which may be located as a free grant, shall be liable to taxation from the date of such sale or grant; (*b*) and any such land which has been already sold, or agreed to be sold, to any person, or had been located as a free grant, prior to the 1st day of January, 1863, (*c*) shall be held to have been liable to taxation since the 1st day of January, 1863; and all such lands shall be liable to taxation thenceforward under this Act, in the same way as other land, whether any license of occupation, location ticket, certificate of sale, or receipt for money paid on such sale, has or has not been, or is or is not issued, and, in case of sale, or agreement for sale by the Crown, whether any payment has or has not been, or is or is not made thereon, and whether any part of the purchase money is or is not overdue and unpaid; (*d*) but such taxation shall not in any way affect the rights of Her Majesty in such lands. (*e*) R. S. O. 1877, c. 180, s. 126.

From what period unpatented lands shall be liable to taxation.

Rights of the Crown saved.

SALE OF LANDS FOR TAXES.

160. Where a portion of the tax on any land has been due for and in the third year, or for more than three years preceding the current year, the treasurer of the county shall, unless otherwise directed by a by-law of the county council, submit to the warden of such county a list in duplicate of all the lands liable under the provisions of this Act to be sold for taxes, with the amount of arrears against each lot set opposite to the same, and the warden shall authenticate each of such lists by affixing thereto the seal of

When lands to be sold for taxes.

Arrears due for three years to be levied by warrant of Warden to Treasurer.

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preliminary to the amount of the arrears being placed upon the roll of the township collector for the purpose of being collected by him under his roll out of the property of the occupant. *Snyder* v. *Shibley*, 21 U. C. C. P. 518, 529.

(*b*) Land vested in Her Majesty, the Queen, is, in general, exempt from taxation. Sec 7, sub-s. 1. But though not patented, if "sold or agreed to be sold," or "located as a free grant," the interest of the purchaser or locatee is liable to taxation and sale. Sec. 171.

(*c*) This was the date fixed by the Act 27 Vict. c. 19. s. 9, of which this section is substantially a re-enactment.

(*d*) This part of the section is intended to cover a defect which was pointed out in *Street* v. *Kent*, 11 U. C. C. P. 255.

(*e*) See note *c* to sec. 171.

the corporation and his signature, and one of such lists shall be deposited with the clerk of the county, (*f*) and the

(*f*) It is declared that "Whenever *a portion* of the tax on any land has been due for *and in the third year*, or for *more* than three years *preceding* the current year, the treasurer of the county shall," &c. The words in Con. Stat. U. C. c. 55, s. 124, were: "Whenever a *portion* of the tax on any land has been due for *five years*, or for such longer period," &c. The statute authorizes a sale upon a contingency. The taxes must be in arrear for the period mentioned before any legal sale can take place. A sale for arrears for a less period than mentioned is the same as a sale where no taxes are in arrear. All the proceedings are in such case void. *Ford* v. *Proudfoot*, 9 Grant 478; *Kelly* v. *Macklem*, 14 Grant 29; *Bell* v. *McLean*, 18 U. C. C. P. 416; see also *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Munro* v. *Grey*, 12 U. C. Q. B. 647; *Errington* v. *Dumble*, 8 U. C. C. P. 65; *Harbourn* v. *Boushey*, 7 U. C. C. P. 464. In *Ford* v. *Proudfoot*, 9 Grant 478, which was decided under that Act, the arrears of taxes for non-payment of which the land was sold were for the years 1853-4-5-6-7. The treasurer's warrant for sale was issued on the 25th of February, 1858, and the sale took place on the 13th of July in the same year. There were therefore five years' taxes due at the date of the warrant and of the sale. But it was held that the taxes were not due for five years within the meaning of the Act. Spragge, V. C., in giving judgment, said: "It is clear from the sections to which I have referred, that no taxes for a year or part of a year are made payable until the collector's roll is placed in his hands, because until then there is no hand to receive them. This may be as late as the 1st day of October. It is also clear that the year's taxes cannot be due in any sense until after the time for appealing from the assessment roll is expired and the municipality has fixed the rate which shall be imposed. This must be done, under the statute, before the 1st of August. It may be done before. It is quite impossible that it should be done so early in the year as the 23rd of February, the date of this warrant; and taking the periods given for the different proceedings, the latter part of July would be the more probable time. But it is said that a *portion* of the year's tax is due after the 1st of January, and that *other* portions grow due from day to day until the whole is due, and that all the statute requires is that a *portion* shall be due for five years. I cannot accede to this view. . . . . To apply my construction of the Act to this case, the taxes for 1853—the earliest year of the arrear—were due and payable, say, some time between 1st of August and 1st of October in that year. The treasurer's warrant was issued a little more than *four years and a half* after the earliest of these dates and the sale took place *within* five years; consequently the sale was premature." In *Kelly* v. *Macklem*, 14 Grant 29, it was determined that there must be the full period of arrears due before the issue of the warrant to sell. In *Bell* v. *McLean*, 18 U. C. C. P. 416, 423, Wilson, J., went further than the learned Chancellor, and said: "I incline to think very strongly that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiry of the year in which they are imposed. It is only after that time the county treasurer has anything to do with them. The fiscal year is clearly

other shall be returned to the treasurer, with a warrant thereto annexed, under the hand of the warden and the seal of the county, commanding him to levy upon the land for the arrears due thereon, with his costs. (*g*) R. S. O. 1877, c. 180, s. 127.

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correspondent with the calendar year in this respect, and the *preceding* year's taxes are those unpaid at the end of the year. By fixing this definite time the computation is made easy for all parties, and there is nothing inconsistent in holding that taxes may be due to enable a distress or suit to be maintained for them at one period, and that they may be considered as due at another period for the purposes of a sale of the land itself. The treasurer's books will certainly not shew five years' arrears if any warrant for sale be issued by him, unless the time be computed from the first of the year after the preceding year's taxes have been imposed." In *Bell* v. *McLean*, the collector got his roll on the 26th of August, 1852, and the county treasurer issued his warrant on the 11th of August, 1857; so that according to the decision in *Ford* v. *Proudfoot*, and without going as far as suggested by Mr. Justice Wilson, the five years had not expired, and the sale was void. So in *Connor* v. *McPherson*, 18 Grant 607, where the collector's roll was not delivered till after August, 1852, and the treasurer's warrant dated 10th July, 1857, the sale, on the authority of the cases already mentioned, was held invalid. When, owing to land being patented in July, taxes are charged thereon only for half a year, yet this is in effect a taxation for the whole fiscal year; and so long as the patent issues before the assessment is completed, taxes for the whole of the year wherein such patent issues may be properly imposed, and the land sold therefor if unpaid. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. Besides reducing the period of arrears from five to three years before the issue of the warrant to sell, the legislature, by the use of the words "*for* and *in* the third year," have endeavoured to avoid some of the difficulties which presented themselves in the decided cases to which reference has been made. See *Wapels* v. *Ball*, 29 U. C. C. P. 403. See further, sec. 364 of the Municipal Act, and notes thereto. The warrant authorized the sale of "the lands hereinafter mentioned." The lands were not mentioned in the warrant, but were contained in a list attached thereto which made no reference to the warrant; nor were the lists authenticated with the seal of the corporation and the signature of the warden, as required: Held, that the description was a sufficient compliance with this section, and that the want of the seal and signature on the lists was cured by sec. 189. *Church* v. *Fenton*, 4 A. R. 159; 5 S. C. R. 239.

(*g*) In *Hall* v. *Hill*, 2 E. & A. 572, the late Chancellor Van-Koughnet said: "The treasurer's warrant is the foundation of the subsequent proceedings, irregularities in which, where they have occurred in acts merely ministerial or executive, the courts have gone a long way to excuse. . . . I look upon the act of the treasurer, in determining what lands are in arrear for taxes and liable to sale, as a *quasi* judicial act, and one which must be performed in accordance with the statute." So where the statute required the treasurer, in his warrant, to distinguish between lands

Council may extend time for payment.

161. The council of a county, city or town shall have power from time to time to extend beyond the term of three years, the time for the enforced collection by sale of non-resident taxes by by-law passed for that purpose. (*h*) R. S. O. 1877, c. 180, s. 128.

Treasurer's duty on receiving warrant to sell.

162. It shall not be the duty of the treasurer to make inquiry before effecting a sale of lands for taxes, to ascertain whether or not there is any distress upon the land ; (*i*) nor shall he be bound to inquire into or form any opinion of the value of the land. (*j*) R. S. O. 1877, c. 180, s. 129.

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patented and those under lease or license of occupation, the warrant was held to be a nullity. *Hall* v. *Hill*, 22 U. C. Q. B. 578 ; 2 E. & A. 569 ; *Haisley* v. *Somers*, 13 O. R. 600. A description of the lands as "*all* patented" is however, sufficient. *Brooke* v. *Campbell*, 12 Grant 526. So where the words used were "*all* deeded." *Cook* v. *Jones*, 17 Grant 488. The warrant should show the particular land that is to be sold. *Townsend* v. *Elliott*, 12 U. C. C. P. 217. A description in the warrant of a particular piece of land as "Pt. of s. pt. 111, 1st Con. Tay, 40 acres, $12 95," was not sufficient. *Grant* v. *Gilmour*, 21 U. C. C. P. 18. It would be sufficient if the identity of the piece of land sold could be established. *McDonell* v. *McDonald*, 24 U. C. Q. B. 74. The warrant must be under the seal as well as the signature of the proper officer. *Morgan* v. *Quesnel*, 26 U. C. Q. B. 539 ; *Morgan* v. *Saubourin*, 27 U. C. Q. B. 230 ; *McDougall* v. *McMillan*, 25 U. C. C. P. 75 ; and founded on the treasurer's return, when a return was required. *Doe Bell* v. *Reaumore*, 3 O. S. 243 ; see also, *Errington* v. *Dumble*, 8 U. C. C. P. 65. A mistake in representing the taxes as due from 1st July, 1820, to 1st July 1828, in place of from 1st January of these years, was held not to hurt. *Doe Stata* v. *Smith*, 9 U. C. Q. B. 658. It was held, under the provisions of a particular statute, that after a separation of counties, the warrant should go to the sheriff of the junior county to sell for arrears due both counties. *Doe Mountcashel* v. *Grover*, 4 U. C. Q. B. 23. A warrant issued in 1837 and postponed by 1 Vict. c. 20, was held to have been properly acted on in 1839. *Todd* v. *Werry*, 15 U. C. Q. B. 614 ; see also, *Hamilton* v. *McDonald*, 22 U. C. Q. B. 136. This section is only directory *Fenton* v. *McCollum*, 41 U. C. Q. B. 239. See *Church* v. *Fenton*, 28 U. C. C. P. 384 ; 4 A. R. 159 ; 5 S. C. R. 239 ; *Fitzgerald* v. *Wilson*, 8 O. R. 559. As to the effect of lists furnished to the warden as evidence of non-payment, see *Re Morton*, 7 O. R. 59. Where it is necessary to prove title under a deed given upon a sale of land for taxes, the production of the warrant directing the sale issued by the treasurer to the sheriff is sufficient evidence of the taxes having been in arrear for the periods therein mentioned. *Clark* v. *Buchanan*, 25 Grant 559.

(*h*) See note *f* to sec. 160.

(*i*) See note *y* to sec. 158.

(*j*) The declaration made in this section to the effect that the treasurer shall not be *bound* to inquire into or form *any opinion* of

What lands only the Treasurer shall sell.

163. The treasurer shall not sell any lands which have not been included in the lists furnished by him to the clerks of the several municipalities in the month of February preceding the sale, nor any of the lands which have been returned to him as being occupied under the provisions of section 143 of this Act, (*k*) except the lands, the arrears for which had been placed on the collection roll of the preceding year and again returned unpaid and still in arrear in consequence of insufficient distress being found on the lands. (*l*) R. S. O. 1877, c. 180, s. 130.

County Treasurer to prepare list of lands to be sold and advertise in *Gazette*.

164—(1) The county treasurer shall (*m*) prepare a copy of the list of lands to be sold, required by section 160 of this Act, and shall include therein, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid to him, distinguishing the lands as patented, unpatented, or under lease or license of occupation from the Crown, and shall cause such list to be published four weeks in the *Ontario Gazette*, and once a week, for thirteen weeks, in some newspaper published within the county, and, in the case of a union of counties, in each county of the union, if there be one published in each county, and if not, in such county or counties of the union in which a newspaper is published, or, if none be so published, in some other newspaper published in some adjoining county.

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the value of the land, was so made because of the decision in *Henry* v. *Burness*, 8 Grant 345. Section 129 (162) provides in effect that the treasurer shall not before effecting a sale of land for taxes, be bound to inquire into or form any opinion of the value of the land. I take the meaning of the words "before effecting a sale of lands for taxes" to be before proceeding to perform the duty cast upon him by section 137 (170). *Per* Armour, C. J., in *Haisley* v. *Somers*, 15 O. R. 275, 278.

(*k*) The statute is prohibitory. The treasurer shall not sell any lands which have not been included in the lists. There is no authority therefore in such a case to sell at all, and the sale, if any attempted, will be void. *Fenton* v. *McWain*, 41 U. C. Q. B. 239.

(*l*) See note *g* to sec. 146.

(*m*) It was, under the 13 & 14 Vict. c. 67, held that the omission of the sheriff to advertise did not affect the validity of a sale for taxes, but should be treated merely as a direction of the statute which the officer was bound to observe at his peril. *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299. Such is the law in the case of a sale by a sheriff under writ of execution. *Paterson* v. *Todd*, 24 U. C. Q. B. 296. But in a case decided under the

Proceedings when lands in arrear for taxes in Junior County separated from Union of Counties.

(2) Where a junior county is separated from a union of counties after a return is made to the treasurer of the united counties of lands in arrear for taxes, but such lands have not been advertised for sale by the treasurer of the united counties, or senior county, such treasurer shall return to the treasurer of the junior county a list of all the lands within the junior county returned as in arrear for taxes, and not advertised; and the treasurer and warden of the junior county shall have power respectively to take all the proceedings which treasurers and wardens, under this Act, can take for the sale and conveyance of lands in arrears for taxes; (*n*) but in case the lands in such junior county have been advertised by the treasurer of the united counties before such separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place. R. S. O. 1877, c. 180, s. 131.

Notice to be given in such advertisement.

165. The advertisement shall contain a notification, that unless the arrears and costs are sooner paid, the treasurer

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16 Vict. cap. 182, it was held that an advertisement in a local paper was equally necessary with an advertisement in the official *Gazette*, and for want of it the sale was held invalid. *Williams* v. *Taylor*, 13 U. C. C. P. 219. And in a case decided under Con. Stat. U. C. cap. 55, the Court of Queen's Bench, in referring to *Williams* v. *Taylor*, said, "If it were necessary, for the decision of this case, we should, as at present advised, arrive at the same conclusion." *Hall* v. *Hill*, 22 U. C. Q. B. 584. But such an irregularity was held not to void the sale in *Cotter* v. *Sutherland*, 18 U. C. C. P. 357, and afterwards in *Connor* v. *Douglass*, 15 Grant 456, by the Court of Appeal. The law is now settled according to the decision of the Court of Appeal. *McLauchlin* v. *Pyper*, 29 U. C. Q. B. 526.

(*n*) Before this subsection, there was a doubt as to the proper officer—the treasurer of the new county, or the treasurer of the old county—to proceed to the sale of lands situate in a junior county, subject to arrears of taxes due to the union. By analogy to procedure after the separation of united townships, it was generally supposed that all power as to the collection of assets, &c. (the power to collect involving the power to sell, see note *g* to sec. 204), would remain with the senior county, unless expressly diverted in favour of the junior county by Act of Parliament. See secs. 212, 213. This subsection appears to have been based upon such an assumption, for it makes a transfer of the power to the junior county under certain circumstances. In *Canada Permanent Building Society* v. *Agnew*, 23 U. C. C. P. 200, it was held that until the pasing of this enactment there was no power either in the treasurer of the senior or junior county, or in any other officer, to sell lands for taxes that accrued due before the separation; and that the power can only now be exercised under this enactment, which is held to be retrospective.

will proceed to sell the lands for the taxes, on a day and at a place named in the advertisement. (*o*) R. S. O. 1877, c. 180, s. 132.

166. The day of sale shall be more than ninety-one days after the first publication of the list. (*p*) R. S. O. 1877, c. 180, s. 133. Time of sale.

167. The treasurer shall also post a notice similar to the said advertisement, in some convenient and public place at the court house of the county, at least three weeks before time of sale. (*q*) R. S. O. 1877, c. 180, s. 134. Notice to be posted up.

168. The treasurer shall, in each case, add to the arrears published his commission and the costs of publication. (*r*) R. S. O. 1877, c. 180, s. 135. Expenses added to arrears.

169. If, at any time appointed for the sale of the lands, no bidders appear, the treasurer may adjourn the sale from time to time. (*s*) R. S. O. 1877, c. 180, s. 136. Adjourning sale, if no bidders.

170—(1) If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, (*t*) the treasurer shall sell by public auction so much of the land as is sufficient to discharge the taxes and all lawful charges incurred in and about the sale Mode in which the lands shall be sold by the Treasurer.

(*o*) This is directory—not imperative; therefore the omission of it will not invalidate the sale. See note *m* to sec. 164.

(*p*) The expression is not that there shall be "ninety-one days" at least between the first publication and the sale, but that there shall be "*more* than ninety-one." See note *c* to sec. 115 of the Municipal Act.

(*q*) The omission to do as here directed would not invalidate the sale. The enactment is directory—not imperative. See note *m* to sec. 164.

(*r*) So that a person intending to pay the arrears of his taxes may, by inspection of the advertisement ascertain how much he must pay to prevent the sale. The amount of taxes stated in the treasurer's advertisement is in all cases to be held to be the correct amount due. Sec. 170.

(*s*) Even though bidders appear, if the treasurer discover a combination among them, or has reason to believe that a combination exists, to prevent fair competition, it seems to be his duty to adjourn. See note *p* to sec. 188.

(*t*) There can be no valid sale after payment of the taxes. See note *p* to sec. 188.

and the collection of the taxes, (*u*) selling in preference such

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(*u*) The sale of part of a whole lot which lay in two concessions, for arrears alleged to be due on half, was held to be illegal. *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594. Where lots are included in one grant, but described by separate numbers, a portion of each lot must be sold to pay the taxes thereon. *Monroe* v. *Grey*, 12 U. C. Q. B. 647. A grant having been issued for lot number 8 and three-quarters of lot number 7, the latter of which was not returned by the Government to the district treasurer as described for grant, and the taxes on the whole of the grant having been paid, the treasurer credited it to the *west* three-quarters, and returned the *east* quarter as in arrear for taxes: Held, that the taxes having been paid on all the land in the grant, the sale of the east quarter was illegal. *Peck* v. *Munro*, 4 U. C. C. P. 363. Lot 18 and the west part of lot 19, containing together two hundred acres, were granted to B in one patent, and in the same year the east part of lot 19, described as containing one hundred and fifty-six acres, was granted to one S. B.'s land, being in arrear for the requisite period, was returned to the treasurer as lot 18 and the west part of lot 19, (two hundred acres,) and the sheriff in 1848, sold and conveyed one hundred and thirty-five acres of lot 19, which included part of the land granted to S. The sale was held illegal. *McDonald* v. *Robillard*, 23 U. C. Q. B. 105. It was held that the sale could not be upheld even as to that portion granted to B.; for lot 18 and the west part of lot 19 should each have been separately charged and sold for arrears. *Ib.* The east and west halves of lot 1, each containing one hundred acres, were granted by the Crown at different times and to different persons. The taxes being in arrear, lots 1 and 2 (four hundred acres) were returned as in arrear for £6 10s. taxes, without distinguishing that one portion of the taxes was on lot 1, and the remainder on lot 2, or upon the separate halves of lot 1. The sheriff put up and sold the whole of lot 1 for the sum of £3 12s. 6d., being half the taxes on the whole, and 7s. 6d. for expenses. Held, the sale was void because a portion of the east-half of the lot had been sold for taxes, a portion whereof had accrued on the west half of the lot, and there were no means of apportionment. *Ridout* v. *Ketchum*, 5 U. C. C. P. 50. So where the north and south half of a lot of land were assessed separately, and different amounts charged against each half-lot, which amounts were afterwards added together and charged against the whole lot, and a portion of the whole lot sold for the combined amounts, the sale was held illegal. *Laughtenborough* v. *McLean*, 14 U. C. C. P. 175; see also, *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91; *Black* v. *Harrington*, 12 Grant, 175; *Christie* v. *Johnstone*, 12 Grant 534. The patent granted a lot by the north and south halves. The patentee, in 1853, conveyed the lot as a whole, and it continued in one owner till the sale of the 35 acres in 1858. In 1858 and 1859, each half was assessed separately. For the next three years it was assessed in two parcels of 165 acres and 35 acres, and for the succeeding two years the north half 100 acres and the west part south half 65 acres were assessed with a valuation of $330 on the whole. Held, right. *Edinburgh Life Ass. Co.* v. *Ferguson*, 32 U. C. Q. B. 253. In 1865, the 165 acres were sold for the taxes due for six years, including 1858, which was not covered by the warrant

part as he may consider best for the owner to sell first: (*v*) and, in offering or selling such lands, it shall not be necessary to describe particularly the portion of the lot which is to be sold but it shall be sufficient to say that he will sell so much of the lot as may be necessary to secure the payment of the taxes due; (*w*) and the amount of taxes stated in

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under which the 35 acres were sold for that year. Held, that the sale was bad. *Ib.* Certain land assessed for taxes was described in the assessment as the north part of a certain lot, which part contained 30 acres: Held, a sufficient description of the northerly 30 acres of the lot, and that it and no other part of the lot was affected by the assessment. *Ley* v. *Wright*, 27 U. C. C. P. 522. Where in the assessment roll for one year land was described as the "S. pt. 12, 53 acres;" and for the following year as "S. E. pt. 12, 53 acres;" and it appeared that the land whether taken as the south or south-east part included portions of the lot owned respectively by F. & C. and on which they had paid their taxes; and also certain lots of a village laid out on part of 12, the assessment was held to be illegal. *Beckett* v. *Johnston*, 32 U. C. C. P. 301. The assessment of four lots containing about 400 acres in the name of the plaintiff embraced seven acres already sold and separately assessed of which fact the assessor was aware: Held, that the assessment was illegal, *Fleming* v. *McNabb*, 8 A. R. 656. See also *Hill* v. *Macaulay*, 6 O. R. 251. The north part of a lot called lot 1 in one survey and lot 4 in another was assessed variously as "number 1 N. half," &c.; "number 1 N. part," &c.; "N. half-lot number 1," &c., and "broken lots number 1 and 4:" Held, that though these irregularities shewed want of care and accuracy they did not invalidate the assessment as the land was sufficiently pointed out. *Nelles* v. *White*, 29 Grant, 338. After a sale for taxes for 1859 and following years, a subsequent sale for taxes for 1858 was held invalid. *Mills* v. *McKay*, 15 Grant, 192. Where the sale was on the 5th of February, 1867, of taxes for 1859 and 1860, a subsequent sale for the taxes of 1862, 1863, 1864, 1865 and 1866, was sustained. *Thompson* v. *Colcock*, 23 U. C. C. P. 505. Where a warrant contained two different entries of the same lot for taxes due in two successive years, and the sheriff at one sale sold for one year's taxes, and at a subsequent adjourned sale, sold the same lot for the second year's taxes, both sales were held void. *Schaefer* v. *Lundy*, 20 U. C. C. P. 487.

(*v*) The treasurer is bound if he sells any particular part of a lot to sell in preference such part as he may consider best for the owner to sell first, and sec. 162 does not relieve him from this duty; and for such purpose he must obtain the information necessary to enable him to arrive at a sound judgment thereon. *Haisley* v. *Somers*, 15 O. R. 275. See also note *p* to sec. 188.

(*w*) In *Knaggs* v. *Ledyard*, 12 Grant, 322, Mowat, V.C., said: "I must presume that the intention of the Legislature was, that a sheriff should let bidders know what part he is selling and they are buying. This is the reasonable course. And I find in the statute no trace whatever of an opposite course having been contemplated." This case was affirmed on appeal, 32 U. C. Q. B. 270, *note*. Now, by

the treasurer's advertisement shall, in all cases, be held to be the correct amount due. (*x*)

When land does not sell for full amount of taxes.

(2) If the treasurer fails, at such sale, to sell any land for the full amount of arrears of taxes due, he shall, at such sale, adjourn the same until a day then to be publicly named by him, not earlier than one week, nor later than three months thereafter, (*y*) of which adjourned sale he shall give notice by public advertisement in the local newspaper, or in one of the local papers in which the original sale was advertised, (*z*) and on such day he shall sell such lands, unless otherwise directed by the local municipality in which they are situate, for any sum he can realize, and shall accept such sum as full

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the statute, an opposite course is expressly authorized. See *Stewart* v. *Taggart*, 22 U. C. C. P. 290. It is sufficient to sell so much of a lot as may be necessary to secure the payment of the taxes due and the particular part need not be determined until the certificate is given to the purchaser. *Haisley* v. *Somers*, 15 O. R. 275. This section applies to the duty of the treasurer at and after the sale and before he grants his certificate; sec. 162 applies to his duty before the sale. *Ib.*

(*x*) An extract from the treasurer's book shewing the amount of taxes imposed, was held not to be sufficient evidence of the fact in an action of ejectment by a person claiming under a tax title. *Munro* v. *Grey*, 12 U. C. Q. B. 647; see *Hall* v. *Hill*, 22 U. C. Q. B. 578; 2 E. & A. 569. A sale of non-resident land being impeached the original collectors roll was produced shewing amounts in arrear which with interest amounted to the sum for which the land was sold. The due preparation of the warrant to sell and the advertisement in the *Gazette* were also proved and this proof was held sufficient. *Fitzgerald* v. *Wilson*, 8 O. R. 559.

(*y*) Under certain circumstances the treasurer *may* adjourn the sale. See note *p* to sec. 188. But under the circumstances here stated, he *shall* adjourn; that is, where he fails to sell *any* land for the *full* amount of the arrears of taxes due. Where a person attended a tax sale and offered to take twenty-nine acres of the lot and pay the full amount of taxes and expenses, and he was declared the highest bidder, but failed to pay the amount, and at an adjourned sale had the whole lot knocked down for the same amount, the sale was held to be void. *Todd* v. *Werry*, 15 U. C. Q. B. 614. See also, *Raynes* v. *Crowder*, 14 U. C. C. P. 111, *McAdie* v. *Corby*, 30 U. C. Q. B. 349. If the purchaser fail immediately to pay the purchase money, it is the duty of the treasurer forthwith again to put up the property for sale. Sec. 172. It would seem that the sheriff may sue a purchaser for the amount of taxes, *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282, in which case it was held necessary to aver that the defendant promised to pay for the land and accept a certificate within a reasonable time. But see *Mingaye* v. *Corbett*, 14 U. C. C. P. 557.

(*z*) The sale will not be held invalid because of a defective notice of sale. See note *m* to sec. 164.

payment of such arrears of taxes; (*a*) but the owner of any land so sold shall not be at liberty to redeem the same, except upon payment to the county treasurer of the full amount of taxes due, together with the expenses of sale; (*b*) and the treasurer shall account to the local municipality for the full amount of taxes paid. R. S. O. 1877, c. 180, s. 137.

Purchase by municipalities of land sold for taxes.

(3) If the council of the local municipality, in which the same shall be situate, desire to become the purchasers of any lot to which sub-section 2 refers, for the amount of the arrears of taxes thereon, it shall be lawful for such municipality to purchase the same if the price offered at such adjourned sale shall be less than the amount of such arrears, and if the council of the local municipality shall, before the day of such adjourned sale, have given notice in writing of the intention so to do; and it shall be the duty of the council of such local municipality to sell any lands which shall be so acquired within three years from the time when they shall be acquired. 50 V. c. 32, s. 7.

When Treasurer sells land the fee of which is in Crown, he shall only sell the interest of lessee, etc.

171. If the treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, licensee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the treasurer and warden, and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee, licensee or locatee enjoyed, (*c*) and shall be valid, without requiring the assent of the Commissioner of Crown Lands. R. S. O. 1877, c. 180, s. 138.

(*a*) The power to sell at the first sale is only for the full amount of taxes. But at the adjourned sale the treasurer may sell "for *any* sum he can realize." As to power of a municipality to purchase where price offered at adjourned sale is less than the arrears, see next sub-section. Neither the treasurer nor the corporation is responsible for the title of the land sold. *Austin* v. *Simcoe*, 22 U. C. Q. B. 73.

(*b*) See sec. 180.

(*c*) Land vested in the Crown is exempt from taxation. Sec. 7 sub-s. 1. But where land is leased, sold, or agreed to be sold by the Crown, or located as a free grant, the interest of the purchaser or locatee is liable to taxation. Sec. 159. Being liable to taxation, it is liable to sale, but the sale of course only passes the rights in respect to the land which the original lessee or locatee enjoyed. Such a sale, when followed by a deed, would, however, prevail against a patent subsequently issued to the original lessee or locatee, or a person claiming under him. *Ryckman* v. *Van Voltenburgh*, 6 U. C. C. P. 385; *Charles* v. *Dulmage*, 14 U. C. Q. B. 585; *O'Grady* v. *McCaffray*, 2 O. R. 309.

When purchaser fails to pay purchase money.

172. If the purchaser of any parcel of land fails immediately to pay to the treasurer the amount of the purchase money, the treasurer shall forthwith again put up the property for sale. (*d*) R. S. O. 1877, c. 180, s. 139.

Certificate of Sale—Tax Deed.

Treasurer selling to give purchaser a certificate of land sold.

173. The treasurer, after selling any land for taxes, shall give a certificate under his hand to the purchaser, (*e*) stating distinctly what part of the land, and what interest therein, have been so sold, (*f*) or stating that the whole lot or estate has been so sold, and describing the same, and also stating the quantity of land, (*g*) the sum for which it has been sold, and the expenses of sale, (*h*) and further stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to sections 170 and 171 of this Act, will be executed by the treasurer and warden on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land is not previously redeemed. (*i*) R. S. O. 1877, c. 180, s. 140.

Purchaser of lands sold for taxes to be deemed owner thereof, for certain purposes, on receipt of Treasurer's certificate.

174—(1) The purchaser shall, on the receipt of the treasurer's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value. (*j*)

(*d*) See note *y* to sec. 170.

(*e*) When a certificate is given, the land must be properly described in it, and be the same land as afterwards conveyed. *Burgess* v. *Bank of Montreal*, 42 U. C. Q. B. 212; 3 A. R. 66. See *Nelles* v. *White*, 29 Grant 338. The treasurer is, with the certificate, to give a statement in detail of the arrears and costs incurred. Sec. 177.

(*f*) See sec. 171.

(*g*) See note *o* to sec. 178.

(*h*) See note *a* to sec. 170.

(*i*) See sec. 180.

(*j*) The certificate confers a qualified ownership on the purchaser. He becomes the owner so far as to have all necessary rights of action and powers for protecting the land from spoliation and waste. He

(2) The purchaser shall not be liable for damage done without his knowledge to the property during the time the certificate is in force. R. S. O. 1877, c. 180, s. 141. Proviso.

175. From the time of a tender to the treasurer of the full amount of redemption money required by this Act, the purchaser shall cease to have any further right in or to the land in question. (*k*) R. S. O. 1877, c. 180, s. 142. Effect of tender of arrears, etc.

176. Every treasurer shall be entitled to two and one-half per centum commission upon the sums collected by him as aforesaid. (*l*) R. S. O. 1877, c. 180, s. 143. Treasurer's commission.

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is not knowingly to permit any person to cut timber growing upon the land; nor can he himself cut timber, or otherwise injure the land. But he may use the land without deteriorating its value. If he injure the land or knowingly permit it to be injured, no doubt he would be responsible to the owner in the event of the land being redeemed. But it is declared that he is not to be responsible for damage done without his knowledge. Under such a certificate the purchaser is entitled to the possession of the land sold, and being in possession he can avail himself of the certificate as a defence to an action of ejectment by the owner of the land. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. So it would seem that under such a certificate he may maintain ejectment against any one in possession under the former owner. *Ib.* In *McLauchlan* v. *Pyper*, 29 U. C. Q. B. 528, Wilson, J., said: "After the time for redemption has gone by, the certificate still continues in force, and the owner has lost his power to redeem. Between that time and the giving of the deed to the purchaser, could the purchaser take possession of the land or eject the former owner by authority of the certificate, or defend his possession against an action by a former owner? I think he could. Yet there is no greater right given to him by the statute to do any of these acts under the certificate, after the time for redemption has gone by, than while it is continuing. If the purchaser were to enter on a vacant lot for the purpose of using the land without deteriorating its value, could the owner, while he had still the right to redeem, eject the purchaser? I think he could not. The purchaser cannot use the land while another person is using it, and claims the right to use it adversely to him. The use referred to is the *usus fructus*, as distinguished from the *fidei commissum*, or what is technically called a use as allied with trusts. 2 Bl. Com. 327. So it is like that kind of *use* of land for which an action for use and occupation will lie."

(*k*) The rights of the purchaser are described in note *j* to the preceding section. It is here declared that these rights shall cease "from the time of a tender to the treasurer of the full amount of the redemption money required by this Act," but no provision is made for communicating the fact of such tender to the purchaser.

(*l*) The commission is "a lawful charge," within the meaning of sec. 170, so as to entitle the treasurer to sell for it as well as the

Fees, etc., on sales of land.

177. Where land is sold by a treasurer, according to the provisions of section 164 and following sections of this Act, he may add the commission and costs which he is hereby authorized to charge for the services above mentioned, to the amount of arrears on those lands in respect of which such services have been severally performed, (*m*) and in every case he shall give a statement in detail with each certificate of sale, of the arrears and costs incurred. (*n*) R. S. O. 1877, c. 180, s. 144.

Expenses of search in Registry Office for description, etc.

178. The treasurer shall, in all certificates and deeds given for lands sold at such sale, give a description of the part sold with sufficient certainty, and if less than a whole lot is sold, then he shall give such a general description as may enable a surveyor to lay off the piece sold on the ground; (*o*)

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taxes in arrear. See sec. 177. See also sec. 278 of the Municipal Act and notes thereto.

(*m*) The commission is in the nature of poundage, to be levied over and above the amount of taxes, and the treasurer is only entitled to it when he has made the money. See *Buchanan* v. *Frank*, 15 U. C. C. P. 196; see further, *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262; *Nash* v. *Dickenson*, L. R. 2 C. P. 252; *Bissicks* v. *Bath Colliery Co.*, 36 L. T. N. S. 800.

(*n*) See note *e* to sec. 173.

(*o*) The method prescribed by 6 Geo. IV. cap. 7, sec. 13, was, to begin at the front angle of the lot on that side whence the lots are numbered, and measure backwards, taking a proportion of the width, corresponding in quantity with the proportion of the particular lot in regard to its length and breadth, according to the quantity required to make the sum demanded. A deed thereunder of "thirty acres of lot, &c., to be measured according to the statute," was held to contain a sufficient description. *Fraser* v. *Mattice*, 19 U. C. Q. B. 150; see also, *McIntyre* v. *Great Western R. W. Co.* 17 U. C. Q. B. 118. But a description as "twenty-five acres of lot," &c., without more, was held insufficient. *Cayley* v. *Foster*, 25 U. C. Q. B. 405. So where the deed, under the 6 Geo. IV., of 120 acres of a lot of land contained two descriptions—the first a description by metes and bounds, which was not in accordance with the statute and the other a general description in accordance with the statute, the latter was held to govern. *McIntyre* v. *Great Western R. W. Co.*, 17 U. C. Q. B. 118. But the statute 13 & 14 Vict. cap. 67, which succeeded the 6 Geo. IV., which was repealed by 13 & 14 Vict. cap. 66, required a description by metes and bounds, and a deed, since that statute, of land sold under it not containing a description by metes and bounds, was held invalid. *McDonell* v. *Donald*, 24 U. C. Q. B. 74. "West part of lot 31, in the 2nd con. of the Township of Enniskillen; that is to say, 185 acres thereof," held insufficient. *Knaggs* v. *Ledyard*, 12 Grant 320. Affirmed on Appeal. "South part of west half of lot 17, in 9th con. Rawdon, 75 acres," insufficient. *Booth* v. *Girdwood*,

and he may make search, if necessary, in the registry office, to ascertain the description and boundaries of the whole parcel, and he may also obtain a surveyor's description of

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32 U. C. Q. B. 23. "Part of south part 111, in 1st con. Tay, 40 acres," not sufficient. *Grant* v. *Gilmour*, 21 U. C. C. P. 18. "N. ½ and W. pt. S. ½, 165 acres," and "N. ½ 100 and W. pt. S. ½, 65 acres," held bad on the authority of *Knaggs* v. *Ledyard*, *Edinburgh Life Ass. Co.* v. *Ferguson*, 32 U. C. Q. B. 253. Wilson, J., said in the last case (p. 270): "I was one of the affirming Judges in that case (*Knaggs* v. *Ledyard*); but I have since, in the case of *Booth* v. *Girdwood*, 32 U. C. Q. B. 23, expressed my opinion that the judgment I then gave was not the one which I ought to have given, for that the west part of the south half of a lot containing 65 acres, is a defined portion of land, namely, the west 65 acres of a particular block of 100 acres." "West half" of the lot has been held good and sufficient. *Bell* v. *McLean*, 18 U. C. C. P. 416, 419. So "the N. or W. ½ 14," in a list under sec. 118 of this Act. *Stewart* v. *Taggart*, 22 U. C. C. P. 284. "Thirty acres north part of lot 33," is sufficient. *Ley* v. *Wright*, 27 U. C. C. P. 522. "Rice Lands Paris Hydraulic Company," not sufficient. *Greenstreet* v. *Paris*, 21 Grant 229. "The easterly 14 acres of the westerly 90 acres of the north half of lot No. 2 in 10th con. of the said Township of Innisfil butted and bounded as follows, &c.," sufficient. *Austin* v. *Armstrong*, 28 U. C. C. P. 47. The words "be the same more or less" following the description may be rejected as surplusage. *Nelles* v. *White*, 29 Grant 338. The premises intended to be conveyed by a deed were described therein as 180 acres of the east halves of two lots, "commencing at the front east halves of said lots, taking the full breadth of each half respectively, and running *northwards* so far as required to make 90 acres of each east half." Held, that "northwards" might be rejected, being evidently a mistake for westward. *Ferguson* v. *Freeman*, 27 Grant 211. Where land was divided into blocks, with streets running through them, and the blocks were sub-divided into lots which were numbered in all from 1 to 174 inclusive, it was held that a sale of any such lots by their numbers only would be a sufficient description, and that if named incorrectly as being on one of the streets it would not vitiate a private sale, as anything beyond the numbers in such sub-division would be surplusage; and the same would apply to a tax sale. *Aston* v. *Innis*, 26 Grant 42. This section requires a "description of the part sold *with sufficient certainty*. This in the same section is defined as being "such *a general description* as may enable *a surveyor to lay off the piece sold on the ground*." A description by metes, bounds, and courses, having relation to the boundaries and courses of the original lot, would be the best description. It would be prudent for the treasurer in all cases, before making his deed, to obtain a surveyor's description of the piece sold. This, no doubt, would be sufficient to enable the same, if not any surveyor, to lay it off on the ground. Such a description could be made out by an examination of the boundaries of the whole lot, and the examination, if necessary, of the registry office. The government maps may be examined where a full description cannot otherwise be obtained. Allowance is made by the section for a surveyor's fee, not to exceed $1, to be included in the treasurer's account, and paid by the purchaser.

such lots, to be taken from the registry office or the government maps, where a full description cannot otherwise be obtained, such surveyor's fee not to exceed $1; and the charge so incurred shall be included in the account and paid by the purchaser of the land sold, or the party redeeming the same. (*p*) R. S. O. 1877, c. 180, s. 145.

Treasurer entitled to no other fees.

179. Except as before provided, the treasurer shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. (*q*) R. S. O. 1877, c. 180, s. 146.

Owners may, within one year, redeem estate sold by paying purchase money and 10 per cent. thereon.

180. The owner of any land which may hereafter be sold for non-payment of arrears of taxes, or his heirs, executors, administrators or assigns, or any other person, (*r*) may, at any time within one year from the day of sale, exclusive of that day, (*s*) redeem the estate sold by paying or tendering to the county treasurer, (*t*) for the use and benefit of the

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(*p*) See sec. 179.

(*q*) It is a general principle that every fee to a public officer must have a legal origin. *Askin* v. *London District Council*, 1 U. C. Q. B. 292; and where a statute allows certain specified fees to a public officer, no others are in general allowed. See *Hooker* v. *Gurnett*, 16 U. C. Q. B. 180; *In re Davidson and Waterloo*, 22 U. C. Q. B. 405; see further, note *c* to sec. 278 of the Municipal Act.

(*r*) The right to redeem is given to the owner of the land or his heirs, executors or administrators, or to any other person, whether claiming title or not. *McDougall* v. *McMillan*, 25 U. C. C. P. 75. Such was the law before the passing of this Act. *Boulton* v. *Ruttan*, 2 O. S. 362; *Gilchrist* v. *Tobin*, 7 U. C. C. P. 141.

(*s*) The time for redemption is, "any time within one year from the day of sale, exclusive of that day." Where the sale took place on the 7th of October, 1840, payment of the redemption money on the 8th of October, 1841, was held too late. *Proudfoot* v. *Bush*, 12 U. C. C. P. 52. But the payment on the 7th of October, 1841, would have been sufficient. *Ib.* The statute of limitations does not begin to run against the purchaser until the period for redemption has expired. *Smith* v. *Midland Ry.*, 4 O. R. 494.

(*t*) In *Allan* v. *Hamilton*, 23 U. C. Q. B. 109, the land was sold in October, 1860. The land was sold for the taxes of 1855-6-7 and 1859, under a warrant dated 11th June, 1860. The amount paid by the purchaser was $31.51. In January, 1861, the owner of the land applied to the treasurer to know the amount of taxes then due on the lot, and was told $37.48 for the years 1855 to 1860 inclusive. This was paid, and a receipt was taken for the taxes for those years. The treasurer, in March, 1861, went to the sheriff's office, and caused an entry to be made in the book of sales, opposite to the lot, that the taxes had been paid within two months after the sale, that

purchaser or his legal representatives, the sum paid by him, together with ten per centum thereon; (*u*) and the treasurer

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he would pay the purchaser the redemption money, and that no deed was to be given. The purchaser was afterwards, and before any deed was given, told what had been done. But for some unexplained reason, a deed was, notwithstanding, given. Held, invalid. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, an entire lot having been sold for taxes, a person paid the redemption on the east half, and a different person the redemption on the west half. It was afterwards represented to the council that the last mentioned payment was a mistake, and the treasurer having been ordered to refund, applied the money to a wholly different lot. Held, that the east half was properly redeemed. In giving judgment, Draper, C. J., said: "The power to sell land was created in order to collect a tax, and the same reason that influenced the Legislature to enable the true owner of a *part* to pay his proper part of the taxes on the whole lot, would exist in his favour to permit him to redeem (that part). . . We think it more in accordance with the spirit and intention of the Act to hold that the benefit conferred on owners of land, under the circumstances stated in the 113th (150th) section, should be treated as extending to owners similarly circumstanced as owning a sub-division of a lot, and to enable them to redeem on adducing satisfactory proof to the treasurer of the sub-division. In our opinion, therefore, the payment received by the treasurer of *the proportion* of the arrears of taxes for which lot 13 was sold—which would be, and in fact were, due in respect of the east half only—was an effectual redemption of *that half of the lot*. And we prefer to rest our conclusion in favour of the defendants on this ground, to entering upon the (to my apprehension) more doubtful question—on the payment made by mistake in the west half of the lot,—a payment which, at first glance, can hardly be said to have redeemed the lot, without holding that the form, not the substance, is to be considered by the Court," &c. If the owner, instead of paying the redemption money to the county treasurer for the vendee, pays it to the latter personally, and he accepts it, the payment is in equity as effectual to save the property as payment to the treasurer would have been. *Cameron* v. *Barnhart*, 14 Grant, 661. So if the vendee verbally agrees to accept payment personally at a distance from the county town, in lieu of its being made to the treasurer for him, and the owner acts on this agreement, the other cannot afterwards, to the owner's prejudice, require payment of the money to the treasurer, refuse to receive it himself when it is too late so pay it to the treasurer, and insist on the land being forfeited. *Ib.* Where such an agreement was proved by a credible witness, but there was contradictory evidence as to whether what took place amounted to an agreement, the Court, holding that the presumption in a case of doubt must be in favour of fair dealing and not of forfeiture, gave the owner relief. *Ib.*

(*u*) When the redemption money is paid. it becomes the money of the purchaser, and not of the municipality. *Wilson* v. *Huron and Bruce*, 8 U. C. L. J. 135; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21, and all rights of the purchaser in regard to the land cease from the time the money is paid or tendered to the treasurer. Sec. 175.

shall give to the party paying such redemption money, a receipt stating the sum paid and the object of payment; and such receipt shall be evidence of the redemption. (*v*) R. S. O. 1877, c. 180, s. 147.

Deed of sale, if not redeemed.

181. If the land is not redeemed within the period so allowed for its redemption, being one year exclusive of the day of sale as aforesaid, (*w*) then, on the demand of the purchaser, or his assigns, or other legal representative, at any time afterwards, and on payment of $1, (*x*) the treasurer shall prepare and execute with the warden, and deliver to him or them, a deed in duplicate of the land sold, in which deed any number of lots may be included at the request of the purchaser or any assignee of the purchaser. (*y*) R. S. O. 1877, c. 180, s. 148.

Meaning of words Treasurer and Warden.

182. The words "treasurer" and "warden" in the preceding section shall mean the persons who at the time of the execution of the deed in such section mentioned hold the said offices. (*z*) R. S. O. 1877, c. 180, s. 149.

Where the purchaser, after the time for redemption is past, succeeds in equity in having the sale avoided, he will be made to do equity and pay the purchase money and ten per cent. thereon. *Massingberd* v. *Montague*, 9 Grant, 92.

(*v*) The receipt must state: 1, The sum paid; 2, The object of payment. And when these things are stated in it, and not otherwise, the receipt is made evidence of the redemption. The words are, "*such* (not any) receipt shall be evidence of the redemption." See *Smith* v. *Blakey* L. R. 2 Q. B. 326.

(*w*) See note *s* to sec. 180.

(*x*) On the demand of the purchaser, &c., and on payment of one dollar, it is incumbent on the treasurer to prepare and execute (with the warden) and deliver a deed in duplicate of the land sold. If he refuse to comply, an action will lie against him, at the suit of the purchaser, for the recovery of damages. *Spafford* v. *Sherwood*, 3 O. S. 441; see also, *Boulton* v. *Ruttan*, 2 O. S. 362. The deed may be in the form mentioned in schedule K., and shall have the effect mentioned in sec. 183. The deed may be demanded by an assignee of the purchaser. See *Doe d. Bell* v. *Orr*, 5 O. S. 433.

(*y*) Unless the purchaser or his assignee otherwise request or direct the treasurer may execute a deed for each separate parcel of land sold, and for each such deed charge the sum of one dollar.

(*z*) The effect of these words will be to enable the successor of the treasurer, who sells, to execute the deed in connection with the warden for the time being. See *Strachey* v. *Turley*, 11 East 194; *Bell* v. *McLean*, 18 U. C. C. P. 416; *Ferguson* v. *Freeman*, 27 Grant 211. The necessity for such a provision will be apparent on refer-

183. The deed shall be in the form or to the same effect as in Schedule K. to this Act, (*a*) and shall state the date and cause of the sale, and the price, and shall describe the land according to the provisions of section 178, of this Act, (*b*) and shall have the effect of vesting the land in the purchaser or his heirs and assigns or other legal representatives, in fee simple or otherwise, according to the nature, of the estate or interest sold; (*c*) and no such deed shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear, or any error in describing the land as "patented" or "unpatented" or "held under a license of occupation." (*d*) R. S. O. 1877, c. 180, s. 150. Contents of deed and effect thereof.

184—(1) The deed shall be registered in the registry office of the registry division in which the lands are situate, within eighteen months after the sale, otherwise the parties claiming under the sale shall not be deemed to have preserved their priority as against a purchaser in good faith who has registered his deed prior to the registration of the deed from the warden and treasurer. (*e*) *See Rev. Stat.* c. 114, s. 78. Deed to be registered within eighteen months to obtain priority.

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ence to *McMillan* v. *McDonald*, 23 U. C. Q. B. 454, and *Jones* v. *Cowden*, 34 U. C. Q. B. 345. In *Bryant* v. *Hill*, 23 U. C. Q. B. 96, where lands were sold under the 6 Geo. IV. ch. 7, but no deed made until after that Act was repealed it was held that the deed was invalid, as no provision had been made in the Act for such a case. See also *McDonald* v. *McDonell*, 24 U. C. Q. B. 424.

(*a*) When the Legislature provides a form of a deed or other conveyance, that form should be as nearly as possible followed. See note *r* to sec. 330 of the Municipal Act.

(*b*) See sec. 178, and notes thereto.

(*c*) The form of the deed is one thing; its effect, another. It is declared that the deed *shall* be in the form given, and when in such form *shall* have the effect of vesting the land in the purchaser in fee simple or otherwise, according to the estate or interest sold. See sec. 171 and notes thereto. It is not declared, as was declared in Con. Stat. U. C. ch. 55, sec. 150, that the deed shall vest the land in the purchaser, "free and clear of all charges and incumbrances thereon;" but, considering that the taxes accrued on any land are, by sec. 137, made a special lien thereon, having preference over all claims, liens, privileges, or incumbrances to any party except the Crown, it is reasonable to intend that it shall convey the land free of incumbrances.

(*d*) Where the taxes due were $2.30, but the amount was by mistake entered in the treasurer's books as $2.50, it was held that the mistake did not vitiate the sale. *Claxton* v. *Shibley*, 10 O. R. 295. See further, as to the binding effect of the deed, secs. 188 and 189, and notes thereto.

(*e*) The provision as to the registering of a deed given upon a sale

Registration of deeds. Rev. Stat. c. 114.

(2) The registrar or deputy registrar upon production of the duplicate deed, (*f*) shall enter the same in the registry book, and give a certificate of such entry and registration in accordance with *The Registry Act.* (*g*) R. S. O. 1877, c. 180, s. 151.

On what certificate Registrars to register Sheriff's deeds of lands sold for taxes before 1851.

185. As respects land sold for taxes before the 1st day of January, 1851, on the receipt by the registrar of the proper county or place, of a certificate of the sale to the purchaser under the hand and seal of office of the sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the sheriff's conveyance to

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for taxes applies as well between several purchasers at successive sales for taxes as between a purchaser thereat and the vendee of the owner. *Aston* v. *Innis*, 26 Grant 42. See also *Smith* v. *McLandress*, *Ib.*, 17.

(*f*) The provisions of the Registry Acts are as much applicable to deeds of this kind as any other deeds. See *Doe Brennan* v. *O'Neil*, 4 U. C. Q. B. 8. But no proof of execution is apparently necessary in order to satisfy the registrar. He is, *upon production* of the duplicate deed to enter the instrument in the registry book. He is bound to give a certificate of the entry and registration. Special provision is also, by this Act, made for the registration of deeds of land sold before the 1st January, 1851, sec. 185, or sold between the 1st January, 1851, and prior to the 1st January, 1866. Sec. 186.

(*g*) It was declared by the Registry Act of 1865, which was passed on the 18th September of that year, that every deed made by a sheriff or other officer for arrears of taxes should be registered within eighteen months after the sale by such sheriff or other officer, . . . otherwise the parties claiming under authority of such sale should not be deemed to have preserved their priority against a purchaser in good faith, who may have registered his deed prior to the registration of such deed from the sheriff or other officer. Stat. 29 Vict. c. 24, s. 56. It was, by the same statute, declared that all deeds for lands sold for taxes before the passing of the Act should be registered within one year after the passing of the Act on peril of losing priority as against a purchaser in good faith, who might have acquired priority of registration, *Ib.* sec. 57. This Act was repealed and, in substance, re-enacted by 31 Vict. cap. 20, Ont. In ejectment, the plaintiff claimed under a tax title made in 1839. The sheriff's deed was made on 10th July, 1840, but not registered till 18th July, 1861. The defendant claimed under the heir-at-law of the patentee, by deed dated 18th May, 1855, and registered on 5th July, 1855. Held, that the title being an unregistered one when the sheriff's deed was given: that the deed did not require registration to preserve its priority: that, having been registered before the 29 Vict. c. 24, s. 57, repealed by 31 Vict. c. 20, s. 59, Ont., it was unnecessary to re-register it under those Acts. *Jones* v. *Cowden*, 34 U. C. Q. B. 345; 36 U. C. Q. B. 495.

the purchaser, his heirs, executors, administrators or assigns, (*h*) and on production of the conveyance from the sheriff to the purchaser, his heirs, executors, administrators or assigns, such registrar shall register any sheriff's deed of land sold for taxes before the 1st day of January, 1851; and the mode of such registry shall be the entering on record a transcript of such deed of conveyance. (*i*) R. S. O. 1877, c. 180, s. 152.

Sheriff to give certificate of execution of conveyances since January 1st, 1851, and before 1st January, 1866, for registration.

186. As respects land sold for taxes since the 1st day of January, 1851, and prior to the 1st day of January, 1866, the sheriff shall also give the purchaser or his assigns, or other legal representatives, a certificate under his hand and seal of office of the execution of the deed, containing the particulars in the last section mentioned; (*j*) and such certificate, for the purpose of registration in the registry office of the proper registry division of any deed of land so sold for taxes shall be deemed a memorial thereof; and the deed shall be registered; and a certificate of the registry thereof shall be granted by the registrar on production to him of the deed and certificate, without further proof; (*k*) and the registrar shall, for the registry and certificate thereof, be entitled to seventy cents and no more. (*l*) R. S. O. 1877, c. 180, s. 153.

Treasurer to enter in a book descriptions of lands conveyed to purchaser by him.

187. The treasurer shall enter in a book, which the county council shall furnish, a full description of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries have been made therein, shall, together with all copies of collectors' rolls and other documents relating to non-resident lands, be by him kept among the records of the county. (*m*) R. S. O. 1877, c. 180, s. 154.

(*h*) Deeds of land sold under this Act are to be registered on mere production of the duplicate. Sec. 184, sub-s. 2. But where the sales took place before the 1st January, 1851, a certificate under the hand and seal of office of the sheriff is in *addition* required.

(*i*) See note *f* to sec. 184.

(*j*) See note *h* to last section.

(*k*) See note *f* to sec. 184.

(*l*) See note *q* to sec. 179.

(*m*) Entries made in such a book, as to the particulars mentioned, might, in the event of the death of the registrar, be evidence of the facts therein contained. See *Smith* v. *Blakey*, L. R. 2 Q. B. 326.

Deed to be binding on all, if land not redeemed in one year. 32 V.c.36 (O.)

188. If any tax in respect of any lands sold by the treasurer, in pursuance of and under the authority of the Assessment Act of 1869 or of chapter 180 of the Revised Statutes of Ontario, 1877 or of this Act, has been due for the third year or more years preceding the sale thereof, (*n*) and the same is not redeemed in one year after the said sale, (*o*) such sale and the official deed to the purchaser of any such lands (provided the sale be openly and fairly conducted) shall be final and binding upon the former owners of the said lands, and upon all persons claiming by, through or under them (*p*)—it being intended by this Act that all owners

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(*n*) See note *f* to sec. 160.

(*o*) See sec. 180, and notes thereto.

(*p*) In *Cotter* v. *Sutherland*, 18 U. C. C. P. 390, Wilson, J., said: "We should require strict proof that the tax has been lawfully made; but in promoting its collection we should not surround the procedure with too unnecessary or unreasonable rigour. We should see that the law is honestly and fairly carried out, and that no injustice is done to the owner or the public, and that the claims of purchasers are properly maintained. A substantial rather than a literal compliance with the provisions of the statute will more equally, and quite fairly protect all parties." This language was quoted with approbation by Chief Justice Richards when delivering the judgment of the majority of the Judges of the Court of Error and Appeal in *Connor* v. *Douglass*, 15 Grant 456, 464. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, 451, Draper, C. J., in delivering the judgment of the Court, said: "The primary, it may be said the sole object of the Legislature in authorizing the sale of lands for arrears of taxes was the collection of the tax. The statutes were not passed to take away lands from their legal owners, but to compel those owners who neglected to pay their taxes, and from whom payment could not be enforced by the other methods authorized, to pay by sale of a sufficient portion of their lands." In *Cook* v. *Jones*, 17 Grant 489, the present Chancellor said: "The language of Chief Justice Draper in a previous case, *Payne* v. *Goodyear*, 26 U. C. Q. B. 451, states accurately, as I think, the purpose and character of these statutes.—(He then quoted the language of the Chief Justice as above and proceeded.)—This is the language of a learned Judge less disposed than some other Judges of the Courts, and less disposed than the majority of the Court in *Connor* v. *Douglass*, to hold tax sales not vitiated by irregularities. I think that Mr. Justice Wilson, in *Cotter* v. *Sutherland*, takes a just view of the objects and nature of these statutes." In *Deverill* v. *Coe*, 11 O. R. 222, a doubt is expressed whether when the land is sold at a gross undervalue the sale can be said to be fairly conducted. See also *Haisley* v. *Somers*, 15 O. R. 275. Where the advertisement of sale did not state whether the land was patented or unpatented; and where the part sold was not the least disadvantageous to the owner, and where, though the owner of the land was known, he was not notified of the assessment, and, liability to sell as required by sec. 141, it was held that these

of land shall be required to pay the arrears of taxes due

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defects were not cured by this section. *Haisley* v. *Somers*, 13 O. R. 600—affirmed on other grounds, 15 O. R. 275. "The strict enactments of secs. 155 and 156 (same as secs. 188 and 189) should be relaxed, and perhaps something might be done in favour of such persons as the defendant, by some retroactive enactment, who are still in possession of the land. But what would be infinitely better would be to put an end to the sale of lands for taxes. These sales were adopted here at a time when the country was thinly settled, and large tracts of land were held by absentees and other non-residents, and the taxes could not otherwise at that time be collected which were chargeable against them, and lands were comparatively of little value. The country is in a different condition now, and it is full time to stop these sales, which are used for the benefit of speculators only, and who are furnished by government with the power of depriving the innocent but careless landholder of his property, or of enforcing from him the most extortionate demand for getting back what is in justice his own. Means may be devised by the legislature to have these arrears placed yearly upon the collector's roll for collection until they are paid, and if they are not paid in some few years, say five, let the municipality become the owners of such lands upon some terms and conditions which may give the owner a chance of redemption for a longer period, and if not redeemed, with power to the council to sell such lands by public sale, and to apply the proceeds for the benefit of the municipality. If any one is to profit by these sales let it be the municipality, or in other words the public, and not the private and unmeritorious speculator." Per Wilson, C. J., in *Deverill* v. *Coe*, 11 O. R. p. 236.

This section declares that the sale and the official deed to the purchaser of any such lands (*provided the sale be openly and fairly conducted*) shall be final and binding, &c. To allow bidders to buy off each other at such a sale, and so to combine to prevent a fair competition, is illegal. Such conduct is against the policy of the law, as the law regards auction sales as a just and open method of selling property for the best price. It is also against the policy of the assessment laws, which appear to have been framed with an anxious desire that when land is sold for taxes, as small a quantity as possible should be sold. Where competition is bought off or silenced, it is a misapplication of terms to call a purchase, a purchase at auction. If the treasurer, when selling lands for taxes, sees that competition—the essential element of an auction sale—is virtually put down, it is his duty to adjourn the sale. The course proper for the treasurer under such circumstances, may be attended with difficulty; but the law has a right to look for the exercise of sound judgment and discretion, as well as firmness in the execution of such duties. *Per* Spragge, V. C., in *Henry* v. *Burness*, 8 Grant 357. An agreement by parties not to bid against each other is not illegal unless from the circumstances connected with it, it amounts to a fraud on the Court. It makes no difference whether the sale is by private auction, or under an order of the Court or at a tax sale. *Keefer* v. *Roaf*, 8 O. R. 69. Where one of the sheriff's officers conducted the sale at which he knocked down without any competition, to another officer of the sheriff, a lot of land worth about £350

thereon within the period of three years, or redeem the same

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for less than £7 10s., the sale was declared void. *Massingberd* v. *Montague*, 9 Grant 92. Where a lot was put up for sale on the 10th of April, when an intending purchaser offered to take 29 acres and pay the taxes, but afterwards refused to carry out the purchase, and in the July following, at an adjourned sale, the same person purchased the 200 acres for the taxes upon the statement that he had already acquired a title to the land, which he desired to confirm, and with a request not to oppose him, the sale was held illegal. *Todd* v. *Werry*, 15 U. C. Q. B. 614. See also *Raynes* v. *Crowder*, 14 U. C. C. P. 111; *McAdie* v. *Corby*, 30 U. C. Q. B. 349. If the land sold were not, at the time of sale, subject to assessment and sale for taxes, *Doe Bell* v. *Reaumore*, 5 O. S. 433; *Street* v. *Kent*, 11 U. C. C. P. 255, or, if at any time before sale the taxes be paid, the sale would be invalid. *Howe* v. *Thompson*, M. T. 6 Vict. MS., R. & J. Dig. 241; *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Myers* v. *Brown*, 17 U. C. C. P. 307. But the payment to be effective must, as against the tax deed, be proved to have been made to some officer entitled to receive it at the time when paid. *Doe d. Sherwood* v. *Mattheson*, 9 U. C. Q. B. 321; *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299, and be proved beyond reasonable doubt. *Macdonald* v. *Rowe*, 9 U. C. C. P. 76. If voluntarily paid, the money cannot be recovered back. *Austin* v. *Simcoe*, 22 U. C. Q. B. 73; see also *Street* v. *Simcoe*, 12 U. C. C. P. 284; 2 E. & A. 211; see further, *Hibbard* v. *Hickman*, 2 Withrow 347. In *Yokham* v. *Hall*, 15 Grant 335, a tax sale for more than was due was held not to be final and binding under 27 Vict. c. 19, sec. 4, from which this section was taken. But this decision was not very cordially approved in *Edinburgh Life Ass. Co.* v. *Ferguson*, 32 U. C. Q. B. 268, where Wilson, J., said: "I do not see why the mere adding together of the two rates, and treating them as a single charge on the whole lot, the sum on each half being exactly alike, and selling a part of the whole lot as for the one rate, so long as the two half lots are owned by the same person, should * * defeat the sale openly and fairly conducted," &c. See *Claxton* v. *Shibley*, 10 O. R. 295; *Nelles* v. *White*, 29 Grant 338. It is competent, where the sale is openly and fairly conducted, to sell the whole lot for taxes. *Cotter* v. *Sutherland*, 18 U. C. C. P. 357. The Court will not, in such a case, presume against a sale on the supposition that too much land was sold for a small amount. *Ib.* Sales made after the return day of the writ to sell, are valid. *Ib.* So where the sale has been openly and fairly conducted, it will be considered final, although it be shewn that the land, though assessed as unoccupied, was occupied. *Bank of Toronto* v. *Fanning*, 18 Grant 391. A lot containing 200 acres and patented as one lot, was, in the year 1875, assessed on the resident roll as lot 114, 200 acres, value $1,000. From 1876 to 1878, it was similarly assessed. In 1879 it was also so assessed, except that the quantity of land was stated to be 100 instead of 200 acres. The whole 200 acres were occupied by a tenant who paid the taxes for each year, including 1879. On the non-resident roll for 1879, the east half of the lot appeared assessed as 100 acres, value $800. By reason thereof it was returned as in arrear for the taxes of 1879 and sold. Held that the sale was invalid; that the assessment

within one year after the treasurer's sale thereof. R. S. O. 1877, c. 180, s. 155.

189. Whenever lands are sold for arrears of taxes, and the treasurer has given a deed for the same, such deed shall be to all intents and purposes valid and binding, (*q*) except as

Deed valid against all parties, if not questioned within a certain time.

on the resident roll for 1879, was of the whole lot upon which the taxes was paid, the mistake in stating the quantity of land to be 100 acres, not making such assessment less an assessment of the whole lot while the error of putting the east half on the non-resident roll, could not affect the owner's right to the land. *Jeffery* v. *Hewis*, 9 O. R. 364. It is opposed to the policy of the law, that an officer having such important powers and duties with reference to the sale of the land for taxes as the treasurer should himself be allowed to become a purchaser at such a sale. *In re Cameron*, 14 Grant 612; *Beckett* v. *Johnston*, 32 U. C. C. P. 301. It has been held that there is nothing to prevent the party assessed, if desirous for any purpose to obtain a tax title, to omit paying the taxes and himself become the purchaser at such a sale. *Stewart* v. *Taggart*, 22 U. C. C. P. 284. This would not, at all events, avail where the person omitting to pay taxes is the tenant for life, designing to acquire the reversion through his own wrong. See *Munro* v. *Rudd*, 20 Grant 55. In *Black* v. *Harrington*, 12 Grant 175, and *Mills* v. *McKay*, 14 Grant 602, it was held, notwithstanding what was said to the contrary in *Ford* v. *Proudfoot*, 9 Grant 478, that the corporation of the local municipality was not a necessary party to a bill impeaching a tax sale. One Tripp, being owner of certain land, executed a marriage settlement under which his wife was entitled to the land for life. The taxes afterwards fell into arrear, and the land was sold by the sheriff to pay them. By arrangement with the purchasers, Tripp's widow became entitled to their interests in the property. She having sold to the defendant, the purchaser at sheriff's sale conveyed to defendant. In a suit by the assignee of Tripp's heirs to set aside this sale, defendant claimed to be a purchaser for value, without notice. The same solicitor acted for vendor and vendee in the sale to defendant. This solicitor knew that Tripp had been the owner, and that he had executed a marriage settlement under which the wife was tenant for life only; but he did not know or suspect that she was bound to pay the taxes for which the land was sold, and he did not communicate to defendant that she was under such an obligation; Held, that defendant was not affected by constructive notice of the liability. *Munro* v. *Rudd*, 20 Grant 55. It would seem that the mayor of a town cannot legally become the purchaser at a sale of lands for taxes in his town. *Greenstreet* v. *Paris*, 21 Grant 229.

(*q*) The section does not make valid a deed made in pursuance of a sale for taxes where there were in fact no taxes in arrears at the time of the sale. *Hamilton* v. *Eggleton*, 22 U. C. C. P. 536; *Proudfoot* v. *Austin*, 21 Grant 566; *McKay* v. *Crysler*, 3 S. C. R. 436; *Deverell* v. *Coe*, 11 O. R. p. 241; or where the sale has been made by an officer, who by virtue of his office was not clothed with authority to sell. *Canada Permanent Building Society* v. *Agnew*, 23 U. C.

against the Crown, if the same has not been questioned before some Court of competent jurisdiction by some person interested in the land so sold within two years from the time of sale. (*r*) R. S. O. 1877, c. 180, s. 156.

Certain Treasurer's deeds not to be invalid, if the sale is valid.

190. In all cases where lands have been validly sold for taxes, the conveyance by the treasurer who made the sale, or his successors in office, shall not be invalid by reason of the statute under the authority whereof the sale was made having been repealed at and before the time of such conveyance, or by reason of the treasurer who made the sale having gone out of office. (*s*) R. S. O. 1877, c. 180, s. 157.

C. P. 200. Not only must a deed be produced, but it must appear that the lands have been sold and for arrears. *Stevenson* v. *Traynor*, 12 O. R. 804. The treasurer is, under sec. 163, prohibited from selling lands which have not been included in the lists furnished by him to the clerks of the several municipalities prior to the sale, and so, although the sale be by the proper officers, it is an unauthorized sale, and not within the protection of this section. *Fenton* v. *McWain*, 41 U. C. Q. B. 239. Where the description of the land sold is so uncertain as to be void, the defect is not cured by this section. *Burgess* v. *Bank of Montreal*, 42 U. C. Q. B. 212; 3 A. R. 66. Where the portion of the lot assessed included land belonging to persons who had paid their taxes, and also certain lots of a village laid out on the lot, the defect was held not to be cured by this section. *Beckett* v. *Johnston*, 32 U. C. C. P. 301.

(*r*) The two years after which the deed is made valid, must elapse after the execution of the deed and not from the time of sale. *Hutchinson* v. *Collier*, 27 U. C. C. P. 249; see further, *Church* v. *Fenton*, 28 U. C. C. P. 384, 404; *Carroll* v. *Burgess*, 40 U. C. Q. B. 381. But in *Claxton* v. *Shibley*, 10 O. R. p. 298, Boyd, C., said: "I am aware of the cases upon this section, which construe the period of two years as current from the giving of the tax deed, but in my humble judgment, that is judicial legislation and not exposition of the statute." See also *Lyttle* v. *Broddy*, 10 O. R. 550; *Deverill* v. *Coe*, 11 O. R. 222. Where two years have elapsed without the deed being questioned, it is not necessary to give evidence that the lands sold have been duly advertised. *Wapels* v. *Ball*, 29 U. C. C. P. 403. Where the notice required by sec. 141 had not been given, it was held that the deed might be questioned, though the two years had elapsed. *Deverill* v. *Coe*, 11 O. R. 222. See further *Smith* v. *Midland R. W.*, 4 O. R. 494. It is doubtful if the section applies to make good a sale otherwise bad, in favour of a purchaser who makes no claim for nearly twenty years, leaving the original owner in possession and in ignorance of the sale. *Austin* v. *Armstrong*, 28 U. C. C. P. 47; *Kempt* v. *Parkyn*, *Ib.* 131; see further, *Carroll* v. *Burgess*, 40 U. C. Q. B. 381. As to what constitutes a questioning of the deed. See *McNab* v. *Peer*, 32 U. C. C. P. 545.

(*s*) The contrary before the passing of this Act had been held in

191. In all cases where lands are sold for arrears of taxes, whether such sale is or is not valid, then so far as regards rights of entry adverse to any *bona fide* claim or right, whether valid or invalid, derived mediately or immediately under such sale, section 9 of *The Act respecting the Law and Transfer of Property* shall not apply, to the end and intent that in such cases the right or title of persons claiming adversely to any such sale shall not be conveyed where any person is in occupation adversely to such right or title, and that in such cases the common law and sections 2, 4, and 6 of the statute passed in the 32nd year of the reign of King Henry VIII., and chaptered 9, be revived, and the same are and shall continue to be revived. (*t*) R. S. O. 1877, c. 180, s. 158.

Rights of entry adverse to tax-purchaser in possession not to be conveyed. Rev. Stat. c. 100, s. 9.

Common Law and 32 H. viii. c. 9, ss. 2, 4 & 6, revived.

192—(1) In all cases (not being within any of the exceptions and provisions of sub-section 3 to this section) where lands having been legally liable to be assessed for taxes, are sold as for arrears of taxes, and such sale or the conveyance consequent thereon is invalid by reason of uncertain or insufficient designation or description of the lands assessed, sold or conveyed, and the right or title of the tax purchaser is not valid, and the tax purchaser has entered on the lands so liable to assessment or any part thereof, and has improved the same, then in case an action for the recovery of the lands is brought against such tax purchaser and he is liable to be ejected by reason of the invalidity of such sale or conveyance, the Judge before whom the action is tried shall direct the jury to assess, or shall himself (if the case be tried without a jury) assess, damages for the defendant for the amount of the purchase money at the sale and the interest thereon. and of all taxes paid in respect of the lands since the sale by the tax

Where sale or conveyance void for uncertainty, and purchaser had improved, the value of the land and improvements, etc., to be assessed and

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Bryant v. *Hill*, 23 U. C. Q. B. 96; *McDonald* v. *McDonell*, 24 U. C. Q. B. 224; see also, *McMillan* v. *McDonald*, 26 U. C. Q. B. 454; *Jones* v. *Cowden*, 34 U. C. Q. B. 345; 36 U. C. Q. B. 495; *McDougall* v. *McMullan*, 25 U. C. C. P. 75.

(*t*) The 32 Hen. VIII. cap. 9 made void the sale by a person not in possession of a mere right of entry. The sections of this Act respecting the transfer of real property which legalized the conveyance of a right of entry are supposed to have superseded the statute of 32 Hen. VIII. cap. 9. The statute of Henry VIII, is for the purposes of this section revived. In *Hill* v. *Long*, 25 U. C. C. P. 265 a conveyance of a right of entry was attacked under the operation of sec. 6 of 33 Vict. cap. 23, from which this section is taken, but the decision of the Court proceeded upon a different ground.

purchaser and interest thereon, and of any loss to be sustained in consequence of any improvements made before the commencement of the action by the defendant, and all persons through or under whom he claims, less all just allowances for the net value of any timber sold off the lands, and all other just allowances to the plaintiff, and shall assess the value of the land to be recovered. (*u*)

The plaintiff to pay for improvements, etc., unless tax purchaser elects to retain the land on paying its value.

(2) If a verdict is found for the plaintiff, no writ of possession shall issue until the plaintiff has paid into court for the defendant the amount of such damages; or, if the defendant desires to retain the land, he may retain it, on paying into Court, on or before the fourth day of the ensuing sittings, or on or before any subsequent day to be appointed by the court, the value of the land as assessed at the trial; after which payment, no writ of possession shall issue, but the plaintiff, on filing in court for the defendant a sufficient release and conveyance to the defendant of his right and title to the land in question, shall be entitled to the money so paid in. (*v*)

Section not to apply

(3) This section shall not apply in the following cases:—

if taxes paid before sale;

(*a*) If the taxes for non-payment whereof the lands were sold have been fully paid before the sale.

if land redeemed;

(*b*) If, within the period limited by law for redemption, the amount paid by the purchaser, with all interest payable thereon, has been paid or tendered to the

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(*u*) Where land was assessed and advertised for sale, described in the warrant and sold at a tax sale, and conveyed as part of lot *eight*, it being in fact part of lot *five*, and when it appeared that the treasurer, who conducted the sale, described the locality of the land intended to be sold and the taxes due upon it, the tax purchaser was held entitled to avail himself of the protection of sec. 9 of 33 Viet. cap. 23, Ont., from which this section is taken. *Churcher* v. *Bates*, 42 U. C. Q. B. 466. This provision "shews the mind of the Legislature that, even in cases where the tax sale cannot be upheld, the purchaser should in an honest case be entitled to be compensated for improvements." *Per* Spragge, C., in *Aston* v. *Innis*, 26 Grant 42, 52. In setting aside a sale which was not void by reason of uncertain or insufficient description of the lands sold it was held that, though compensation could not be given under this section, it might be under Rev. Stat. c. 100, sec. 30. *Haisley* v. *Somers*, 13 O. R. 600.

(*v*) There should be an assessment at that time not only of the damage but of the value of the land for the purposes of this section. The defendant may retain the land before paying into Court its assessed value. The plaintiff is not entitled to the possession unless he pay the damages assessed.

person entitled to receive such payment, with a view to redemption of the lands.

(c) Where, on the ground of fraud or evil practice by the purchaser at any such sale, a Court would grant equitable relief. R. S. O. 1877, c. 180, s. 159. in cases of fraud.

193—(1) In any of the cases named in the preceding section wherein the plaintiff is not tenant in fee simple or fee tail, the payment into court to be made as aforesaid, of the value of the land, by the defendant desiring to retain the land shall be into the High Court, and the plaintiff and all parties entitled to and interested in the said lands, as against the purchaser at such sale for taxes, on filing in the High Court a sufficient release and conveyance to the defendant of their respective rights and interests to the land, shall be entitled to the money so paid in such proportions and shares as to the High Court, regarding the interests of the various parties, seems proper. (*w*) When the owner is not tenant in fee, the value of the land to be paid into Court.

(2) In any of such cases wherein the defendant is not tenant in fee simple or fee tail, then the payment of damages into Court to be made as aforesaid by the plaintiff, shall be into the High Court. R. S. O. 1877, c. 180, s. 160. When the owner is not tenant in fee, the value of improvements, etc., to be paid into Court.

194—(1) If the defendant does not pay into Court the value of the land assessed as aforesaid, on or before the fourth day of the said sittings, or on or before such subsequent day as may be appointed by the Court, then any other person interested in the lands under the sale or conveyance for taxes may, before the end of the said sittings, or before the expiry of ninety days from any subsequent day to be appointed by the Court for payment by the defendant, pay into Court the said value of the lands; and till the expiration of the time within which such payment may be made, and after such payment no writ of possession shall issue. (*x*) Any other person interested may pay in value assessed if defendant does not.

(2) The defendant, or other person so paying in shall be entitled as against all others interested in the lands under the sale or conveyance for taxes, to a lien on the lands for such amount as exceeds the proportionate value of his interest in the lands, enforceable in such manner and in such shares and proportions as to the High Court, regarding the interests The payer to have a lien for such proportion as exceeds his interest.

(*w*) See note *v* to sec. 192.

(*x*) See note *v* to sec. 192.

of the various parties, and on hearing the parties, seems fit. R. S. O. 1877, c. 180, s. 161.

How the owner can obtain the value of the land paid in.

195. In case the defendant or any other person interested pays into Court in manner aforesaid, the plaintiff shall be entitled to the amount so paid in, on filing in Court a sufficient release and conveyance to the party so paying in, of all his right and title to the lands, in which release and conveyance it shall be expressed that the same is in trust for such party, to secure his lien as aforesaid. (*y*) R. S. O. 1877, c. 180, s. 162.

How the value of improvements, etc., paid in can be obtained.

196. If the said value of the lands is not paid into Court as above provided, then the amount of the damages paid into the High Court shall be paid out to the various persons, who, if the sale for taxes were valid would be entitled to the lands, in such shares, and proportions as to the High Court, regarding the interests of the various parties, seems fit. R. S. O. 1877, c. 180, s. 163.

Provision as to costs in cases where value of the land and improvements, etc., only in question.

197—(1) In all actions for the recovery of land, in which both the plaintiff (if his title were good) would be entitled in fee simple or fee tail, and the defendant (if his title were good) would be also so entitled, if the defendant, at the time of appearing gave notice in writing to the plaintiff in such action or to his solicitor named on the writ, of the amount claimed, and that on payment of such amount, the defendant or person in possession would surrender the possession to the plaintiff; or that he desired to retain the land, and was ready and willing to pay into Court a sum mentioned in the said notice as the value of the land, and that the defendant did not intend at the trial to contest the title of the plaintiff; and if the jury or the Judge, if there be no jury, before whom the action is tried, assess damages, for the defendant as provided in the next preceding five sections, and it satisfactorily appears that the defendant does not contest the action for any other purpose than to retain the land on paying the value thereof, or obtain damages, the Judge before whom the action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff

(*y*) The filing in Court of a sufficient release and conveyance by the plaintiff to the party paying the money into Court of all his, the plaintiff's right and title to the lands is a condition precedent to the obtaining of the money out of Court. See note *v* to sec. 192.

has been nonsuited on the trial, or a verdict had been rendered for the defendant.

(2) If on the trial it is found that such notice was not given as aforesaid, or if the Judge or jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant has refused to surrender possession of the land after tender made of the amount claimed, or (where the defendant had given notice of his intention to retain the said land), that the value of the land is greater than the amount mentioned in the said notice, or that he has omitted to pay into Court the amount mentioned in the said notice for thirty days after the plaintiff had given to the defendant a written notice that he did not intend to contest the value of the land mentioned in such notice, then in such case the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the plaintiff. (*z*) R. S. O. 1877, c. 180, s. 164.

Tax purchaser without other remedy whose title is invalid to have a lien on the land for purchase money, etc.

198. In any case in which the title of the tax purchaser is not valid, or in which no remedy is otherwise provided by this Act, the tax purchaser shall have a lien on the lands for the purchase money paid at such sale, and interest thereon at the rate of ten per centum per annum, and for the amount of all taxes paid by him or them since such sale and interest thereon at the rate aforesaid, to be enforced against the lands in such proportions as regards the various owners, and in such manner as the High Court thinks proper. (*a*) R. S. O. 1877, c. 180, s. 165.

(*z*) This section principally relates to costs. The general rule is that the party who succeeds in the recovery of the land is entitled to the costs. But this section is an exception to that rule. It enables the defendant, although surrendering the land, to obtain his costs of the defence. The section also incidentally provides a rule of evidence to the effect that "upon the trial of any cause after such notice, no evidence shall be required to be produced in proof of the title of the plaintiff."

(*a*) In *Austin* v. *Simcoe*, 22 U. C. Q. B. 73, it was held that a tax purchaser who paid for what at the time of sale all supposed to be an interest in land, was not entitled to recover back his payment on it appearing that nothing was sold. The object of this section is, in such a case, to create not only a lien for the amount of the purchase money, but to provide for the payment of the interest thereon at the rate of ten per cent. per annum, and for the repayment, with

Contracts between tax-purchaser and original owner continued.

199. No valid contract entered into between any tax purchaser and original owner, in regard to any lands sold or assumed to have been sold for arrears of taxes, as to purchase, lease, or otherwise, shall be annulled or interfered with by this Act, but such contract shall remain in force, and all consequences thereof, as to admission of title or otherwise, as if this Act had not been passed. (*b*) R. S. O. 1877, c. 180, s. 166.

Secs. 190-199, not to apply where the owner has occupied since sale.

200. Nothing in the next preceding ten sections of this Act contained shall affect the right or title of the owner of any land sold as for arrears of taxes, or of any person claiming through or under him, where such owner at the time of the sale was in occupation of the land, and the same have since the sale been in the occupation of such owner, or of those claiming through or under him. (*c*) R. S. O. 1877, c. 180, s. 167.

Other Acts remedial to purchasers continued.

201. Nothing in the next preceding eleven sections of this Act contained shall prejudice the right or title which any purchaser at any sale for taxes, or any one claiming through or under him, has heretofore acquired or hereafter acquires under any other statute. (*d*) R. S. O. 1877, c. 180, s. 168.

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interest of the amount of taxes paid by the tax purchaser. This section does not apply where no taxes were in arrear at the time of the sale. *Charlton* v. *Watson*, 4 O. R. 489.

(*b*) Before the passing of the 33 Vic. cap. 23, in 1869, cases arose in which the former owner and the tax purchaser contracted with each other upon the faith of a valid sale for taxes, which both supposed to have taken place, but on discovery of the truth, that is, that the sale was invalid, the contract was amended or otherwise put an end to, notwithstanding the apparent admission of title by reason of the dealing between the parties. The object of sec. 12 of the Act of 1869, from which this section is taken, is to continue in force contracts so made notwithstanding the subsequent discovery of the invalidity of the sale. This is done with all the consequences of a valid sale as to admission of title or otherwise.

(*c*) A person in the occupation of land is supposed to have some knowledge of the assessment and sale of the land or of facts which ought to put him upon enquiry. Where such a person is negligent, he is not entitled to the protection and benefits provided by the ten next preceding sections.

(*d*) The object is not to divest a person of the title which before the passing of this Act he had acquired, or which he may acquire under any *other* statute. The declaration of the Legislature is, that nothing in the eleven next preceding sections "shall prejudice the right or title" of such a person or of any one claiming through or under him.

Construction of "Tax-purchaser," "Original owner."

202. In the construction of the next preceding twelve sections of this Act, occupation by a tenant shall be deemed the occupation of the reversioner; and the words "tax purchaser" shall apply to any person who purchases at any sale under colour of any statute authorizing sales of lands for taxes in arrear, and shall include and extend to all persons claiming through or under him; and the words "original owner" shall include and extend to any person who, at the time of such sale, was legally interested in or entitled to the land sold, or assumed to be sold, and all persons claiming through or under him. (*e*) R. S. O. 1877, c. 180, s. 169.

DEFICIENCY FROM NON-PAYMENT OF CERTAIN TAXES PROVIDED FOR.

Deficiencies in certain taxes to be supplied by local municipality.

203. Every local municipal council, in paying over any school or local rate, or its share of any county rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply, out of the funds of the municipality, any deficiency arising from the non-payment of the tax, but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect, the taxes on personal property other than for county rates. (*f*) R. S. O. 1877, c. 180, s. 175.

ARREARS OF TAXES IN CITIES AND TOWNS.

Collection of arrears of taxes in cities and towns.

204. In cities and towns arrears of taxes shall be collected and managed in the same way as is hereinbefore provided in the case of other municipalities; (*g*) and for such purposes the municipal officers of cities and towns shall perform the same duties as the like officers in other municipalities; and the treasurer and mayor of every city or town shall, for such purposes, also perform the like duties as are hereinbefore, in

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(*e*) See note *b* to sec. 1 of the Municipal Act as to the effect of an interpretation clause in an Act of Parliament.

(*f*) Real property is fixed; personal property is movable. There is full security for the collection of a moderate rate due in respect of the one, and not much in respect of the other. Hence, while the duty is imposed to supply out of the funds of the municipality any deficiency arising from non-payment of the former, the rule is not made to extend to deficiencies arising from abatements of, or inability to collect the latter.

(*g*) The power given to a city to collect taxes authorizes the sale by the city of non-resident land. *Per* Wilson, J., in *McKay* v. *Bamberger*, 30 U. C. Q. B. 95, 97. But until the passing of sec. 172 of

the case of other municipalities, imposed on the county treasurer and warden respectively. R. S. O. 1877, c. 180, s. 185. *See* sec. 141.

County treasurers, etc., to keep triplicate blank receipt books.

205. The treasurer of every county, city and town shall keep a triplicate blank receipt book, and on receipt of any sum of money for taxes on land, shall deliver to the party making payment one of such receipts, and shall deliver to the county, city or town clerk the second of the set, with the corresponding number, retaining the third of the set in the book, the delivery of such receipts to be made to the clerk at least every three months; (*h*) and the county, city or town clerk shall file such receipts, and, in a book to be kept for that purpose, shall enter the name of the party making payment; the lot on which payment is made; the amount paid; the date of payment, and the number of the receipt; and the auditors shall examine and audit such books and accounts at least once in every twelve months. (*i*) R. S. O. 1877, c. 180, s. 186.

Audit of books, etc.

ARREARS OF TAXES IN NEW MUNICIPALITIES,

On incorporation of a town, county treasurer to transmit list of arrears to town treasurer.

206. Upon the incorporation of any new town in any county, the county treasurer shall make out a list of all arrears of taxes then due and unpaid in his books upon lands situate in the newly incorporated town, and transmit the same to the treasurer of the town, who, after receipt of the said list, shall have, with the mayor, all the powers possessed by the county treasurer and warden for the collection of such taxes and for enforcement of the same by sale; but in such list the county treasurer shall not include any lot then advertised for sale for taxes. 44 V. c. 25, s. 11; 46 V. c. 18, s. 24.

Arrears of taxes, how collected where new municipality formed.

207. In cases where a new local municipality is formed partly from two or more municipalities situate in different counties, the collection of arrears of taxes due at the time of formation shall be made by the treasurer of the county in

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29 & 30 Vict. ch. 53, of which the above was a re-enactment, a city had no power to sell the land of a resident for arrears of taxes. *Ib.*

(*h*) This is intended not merely as a check upon the persons receiving the money, but for the preservation of evidence of payment; so that if one set of receipts should happen to be destroyed or mislaid, the other will be forthcoming.

(*i*) See note *g* to sec. 248 of the Municipal Act.

which the new municipality is situate, if the new municipality is a township or village, or if the new municipality is a town, by the treasurer of such town; and for the purpose of enabling him to make the collection, the treasurer or the treasurers of the other county or counties from which any portion of the new municipality is detached, shall immediately upon the formation thereof, make out lists of the arrears of taxes then due in their respective portions, and transmit the same to the treasurer of the county in which the new municipality is situate, or of the town (as the case may be); and where a new municipality is formed from two or more municipalities situate in any one county, the treasurer shall keep a separate account for such new municipality. 44 V. c. 25, s. 7.

Who may take proceedings to enforce collection.

208. The treasurer and warden of the county in which the new municipality, if it be a township or village, is situate, and the treasurer and mayor of the new municipality, if it be a town, shall have power, respectively, to take for the collection of such arrears of taxes all the proceedings which treasurers and wardens or treasurers and mayors can take for the sale and conveyance of land in arrear for taxes, and in case the lands in the new municipality have been advertised by the treasurer or treasurers of the county or counties of which the new municipality formed part before its formation, the sale of such lands shall be completed in the same manner as if such new municipality had not been formed. 44 V. c. 25, s. 8.

Proceedings where return made to treasurer before separation.

209. Where a municipality or part of a municipality has been or may be hereafter separated from one county and included in another after a return has been made to the treasurer of the county to which it formerly belonged of lands in arrear for taxes, but the lands have not been advertised for sale by the treasurer of the former county, such treasurer shall return to the treasurer of the county to which such territory belongs a list of all the lands within such territory returned as in arrear for taxes and not advertised; and the treasurer and warden of the county to which the territory belongs shall have power respectively to take all the proceedings which treasurers and wardens under this Act can take for the sale and conveyance of lands in arrear for taxes; but in case the lands in such territory have been advertised before the separation, the sale of such lands shall be completed in the same manner as if the separation had

not taken place, and conveyance of lands previously sold shall be made in like manner. 44 V. c. 25, s. 9.

NON-RESIDENT LAND FUND.

The non-resident land fund.

210—(1) The council may by by-law, direct that all the moneys received by the county treasurer on account of taxes on non-resident lands, shall be paid at stated periods to the several local municipalities to which such taxes were due, or that they shall constitute a distinct and separate fund to be called the "Non-resident Land Fund" of the county. (*j*)

If no such fund.

(2) In the absence of such by-law, the county treasurer shall pay over to the local treasurer all such moneys when so collected. (*k*) R. S. O. 1877, c. 180, s. 170.

Treasurer to open an account therefor.

211. The treasurer shall, when such fund has been created, open an account for each local municipality with the said fund. (*l*) R. S. O. 1877, c. 180, s. 171.

(*j*) The treasurer of the county is the person on whom the law throws the duty of collecting such taxes as are shown to be in arrear by the collector's roll, received by him from the several townships, after all efforts have failed to collect in the townships, in consequence of the owner having been a non-resident, or there being no sufficient distress on the land. *Per* McLean, C. J., in *Austin* v. *Simcoe*, 22 U. C. Q. B. 75. All money received by him on account of taxes of non-residents may either, under by-law of the county council, be at once distributed among the several local municipalities to which the taxes are due, or constitute a fund known as the "Non-resident Land Fund." Sec. 210. Though subject, for certain purposes, to the control of the county council; see *Robertson* v. *Wellington*, 27 U. C. Q. B. 336, which may issue debentures on the credit of it, secs. 215 and 216, it is in no sense the money of the council. *Wilson* v. *Huron and Bruce, Bank of Montreal Garnishees*, 8 U. C. L. J., 135; *same parties, Macdonald garnishee, Ib.* 136; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21. The treasurer must, when a fund has been created, open an account for each local municipality with the fund, sec. 211; and in the event of a union of local municipalities being afterwards dissolved, must open an account with each. Sec. 212.

(*k*) These words were added to the original section by 33 Vict. c. 27, s. 10, Ont. Before the amendment was made, it was held that local municipalities were not entitled to recover the moneys either from the county; *Mara* v. *Ontario*, 13 Grant 347, or the treasurer; *Nottawasaga* v. *Boys*, 21 U. C. C. P. 106, until the passage of a by-law properly apportioning the money. It is now made the duty of the county treasurer, in the absence of any such by-law, to pay over to the local treasurer all moneys received on account of non-resident lands in any local municipality, *when so collected*. The corporation of the county is responsible for the due accounting of the fund by the treasurer. See note *a* to sec. 247.

(*l*) See notes to sec. 210.

When any union about to be dissolved.

212. If a union of counties is about to be dissolved, all the taxes on non-residents' land imposed by by-laws of the provisional council of the junior county, shall be returned to and collected by the treasurer of the united counties, and not by the provisional treasurer; (*m*) and the treasurer of the united counties shall open an account forthwith for the junior county with the non-resident land fund. (*n*) R. S. O. 1877, c. 180, s. 172, *part.*

Collection of taxes in new municipalities.

213. In cases where a new county has been or shall be formed, in whole or in part, from two or more municipalities situate in different counties, the collection of non-resident taxes due at the time of formation in respect of lands situate in the new county which have not been advertised for sale, shall be made by the treasurer of the new county; and for the purpose of enabling him to make such collection, the treasurers of the other counties formerly having jurisdiction over the respective portions of territory included in the new county shall make out lists of the non-resident taxes then due in their respective portions, and transmit the same to the treasurer of the new county. 44 V. c. 25, s. 10.

Money from non-resident land fund, how appropriated.

214. All sums which may at any time be paid to a municipality out of the non-resident land fund of the county, shall form part of the general funds of such municipality. R. S. O. 1877, c. 180, s. 176.

Debentures may be issued on the credit of non-resident land fund

215. The council of the county may, (*p*) from time to time, by by-law, authorize the warden to issue, under the corporate seal, upon the credit of the non-resident land fund, debentures payable not later than eight years after the date thereof, and for sums not less than $100 each, so that the whole of the debentures at any time issued and unpaid do

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(*m*) It was generally supposed that the treasurer of the senior county would, after a dissolution of the union of counties, be the proper person to collect taxes due to the union before the dissolution and to take all proceedings necessary to that end. But in *Canada Permanent Building Society* v. *Agnew*, 23 U. C. C. P. 200, it was decided that until the passing of sub-s. 2 of sec. 132 of 32 Vict. c. 36, there was no officer having the necessary powers to enforce the collection of arrears of taxes in the case supposed by sale of the land in respect to which the arrears were due. See note *n* to sec. 164.

(*n*) See note *j* to sec. 210.

(*p*) *May*, &c. Permissive—not obligatory. See note *x* to sec. 534 of the Municipal Act.

not exceed two-thirds of all arrears then due and accruing upon the lands in the county, together with such other sums as may be in the treasurer's hands, or otherwise invested to the credit of the said fund; (*q*) and all debentures issued by the county shall be in the exclusive custody of the treasurer, who shall be responsible for their safety until their proceeds are deposited with him. (*r*) R. S. O. 1877, c. 180, s. 177.

Who to have charge of them.

216. Such debentures shall be negotiated by the warden and treasurer of the county, and the proceeds shall be paid into the said fund, and the interest on the said debentures, and the principal when due, shall be payable out of such fund: (*s*) but the purchaser of any such debentures shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof. R. S. O. 1877, c. 180, s. 178.

By whom to be negotiated.

Proviso.

217. If at any time there is not in the non-resident land fund, where such fund has been created, money sufficient to pay the interest upon a debenture or to redeem the same when due, such interest or debenture shall be payable out of the general county funds, (*t*) and the payment thereof may be enforced in the same manner as is by law provided in the case of other county debentures. (*u*) R. S. O. 1877, c. 180, s. 179.

Provision for payment of such debentures.

(*q*) Debentures, when regularly issued, are transferable by delivery. See section 405 *et seq.* of the Municipal Act, and notes thereto.

(*r*) The treasurer being the special officer entrusted with the collection of the money that constitutes the fund. See note *j* to sec. 210.

(*s*) The fund is intended to meet in advance the wants of the local municipalities, and not in any way to be a source of revenue or gain to the corporation of the county. See note *j* to sec. 210. It is very properly provided, that the purchaser of a debenture shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof.

(*t*) The debenture, though issued on the security of a particular fund, is in reality a promise of the county, and so the county is bound to advance out of the general county funds money sufficient to pay interest.

(*u*) The ordinary mode of enforcing payment of debentures is by action. See *Trust and Loan Co.* v. *Hamilton*, 7 U. C. C. P. 98; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121; *Crawford* v. *Cobourg*, 21 U. C. Q. B. 113.

Surplus of the non-resident land fund to be divided among municipalities.

218. The council of the county may from time to time pass by-laws apportioning the surplus moneys in the non-resident land fund amongst the municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each municipality; (*v*) but such apportionment shall always be so limited that the debentures unpaid shall never exceed two thirds of the whole amount to the credit of the fund. (*w*) R. S. O. 1877, c. 180, s. 180.

Treasurer's percentage or salary, how paid.

219. The treasurer shall not be entitled to receive from the person paying taxes any percentage thereon, (*x*) but may receive from the fund such percentage upon all moneys in his hands, or such fixed salary in lieu thereof, as the county council by by-law may direct. R. S. O. 1877, c. 180, s. 181.

Annual statements of fund to be submitted to councils.

220. The county treasurer shall prepare and submit to the county council, at its first session in January in each year, (*y*) a report, certified by the auditors, of the state of the non-resident land fund. R. S. O. 1877, c. 180, s. 182.

What it shall shew.

221—(1) The report shall contain an account of all the moneys received and expended during the year ending on the 31st of December next preceding, distinguishing the sums received on account of, and paid to, the several municipalities, and received and paid on account of interest or debentures negotiated or redeemed, and the sums invested and the balance in hand; a list of all debentures then unpaid, with the dates at which they will become due; and a statement of all the arrears then due, distinguishing those due in every municipality, and the amount due on lands then advertised for sale, or which by law may be advertised during the ensuing year. R. S. O. 1877, c. 180, s. 183.

Copy to be transmitted to provincial secretary.

(2) The warden shall cause a copy of the report to be transmitted to the Provincial Secretary for the information of the Lieutenant-Governor. (*z*) R. S. O. 1877, c. 180, s. 184.

(*v*) See note *k* to sec. 210.

(*w*) This is a restriction. A by-law contrary to this restriction, could not be supported. The object of the restriction is plainly to afford security for the due payment of unpaid debentures.

(*x*) See note *q* to sec. 179.

(*y*) See note *g* to sec. 248 of the Municipal Act.

(*z*) It is not said *when* the warden shall cause this to be done, but

ALL ARREARS TO FORM ONE CHARGE ON THE LAND.

All arrears to form one charge upon lands subject to them, etc.

222. The treasurer of the county shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears, from whatever rates arising, shall be taken together and form one charge on the land. R. S. O. 1877, c. 180, s. 174.

RESPONSIBILITY OF OFFICERS.

Security by treasurers and collectors.

223. Every treasurer and collector, before entering on the duties of his office, shall enter into a bond to the corporation of the municipality for the faithful performance of his duties. (*a*) R. S. O. 1877, c. 180, s. 187.

Bond with sureties.

224. Such bond shall be given by the officer and two or more sufficient sureties, in such sum and such manner as the council of the municipality by any by-law in that behalf requires, and shall conform to all the provisions of such by-law. (*b*) R. S. O. 1877, c. 180, s. 188.

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without doubt it is intended that he shall do so within a reasonable time after the receipt of the report.

(*a*) Besides giving the security mentioned, each of the officers named must, before entering on the duties of his office, make and subscribe a declaration of office. See sec. 271 of the Municipal Act. The appointment to the office necessarily precedes the obligation to give the bond or make oath. So soon as the person is appointed, it becomes his duty to do the one or the other. But the omission of either does not *per se* vacate the appointment, unless conditionally made, or render the person appointed incompetent to discharge the other duties appertaining to his office. See *Judd* v. *Read*, 6 U. C. C. P. 362; see further, note *j* to sec. 249 of the Municipal Act.

(*b*) The bond should be made to the corporation of the municipality, sec. 223, and in the name of the corporation thus: "*Corporation of the* county, city, town, village, township, or united counties or united townships, *as the case may be*) of (naming the same). See sec. 5 of the Municipal Act But it does not follow that bonds taken in any other name or in any other form will be void. A bond by a collector and sureties to "the treasurer of the town of," &c., has been held good. *Judd* v. *Read*, 6 U. C. C. P. 362; *Todd* v. *Perry*, 20 U. C. Q. B. 649; see further, *O'Connor* v. *Clements*, 1 U. C. C. Q. B. 386; *Eastern District Council* v. *Hutchins*, 1 U. C. Q. B. 321. So where it was to "The municipality of the township of Whitby." *Whitby* v. *Harrison*, 18 U. C. Q. B. 603, 606; or, "The Provisional Municipal County Council of the county of Bruce," *Bruce* v. *Cromar*, 22 U. C. Q. B. 321, in each case the bond was held good. See also, *Brock District Council* v. *Bowen*, 7 U. C. Q. B. 471; *Trent and Frankford Road Co.* v. *Scott Marshall*, 10 U. C. C. P. 329. The bond, when given, should have two or more *suffi-*

225. If any treasurer, assessor, clerk, or other officer refuses or neglects to perform any duty required of him by this Act, (*c*) he shall, upon conviction thereof before any Court of

Penalty on assessors or clerks failing to perform

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cient sureties in such sum and in such manner as the council of the municipality by any by-law shall require in that behalf. The members of municipal councils cannot, as trustees for the ratepayers, evince too much care in seeing that the receipt and expenditure of the money of the ratepayers is properly secured; and in cases of flagrant neglect it is quite possible that the members themselves might be held personally responsible. See *Parks* v. *Davis*, 10 U. C. C. P. 229. The bond, if in general terms for accounting and paying over all moneys collected will apply as well to moneys collected for county purposes as for any of the purposes mentioned in sec. 240. See sec. 242 of this Act; see further, note *k* to sec. 249 of the Municipal Act.

(*c*) This is a wise provision, intended to secure the due execution of the Act by the officers mentioned, whose business it is to learn their duty, and to do it accordingly. See *Peterborough* v. *Edwards*, 31 U. C. C. P. 231. Either refusal or neglect is made punishable. The former involves an act of the will, but the latter does not necessarily do so. Any inquiry into the motives or cause of neglect, so far as this section is concerned, would be inexpedient. But mere omission is not necessarily equivalent to neglect. Inability or superior force may excuse the non-performance of a duty by one who is willing to do it. Nor does it follow that every non-compliance with the directions of the Act, in its minor details, will bring the party within the penalty of this section. The penal part of the Act may press with more severity in one class of cases than another; but the law is so written, and the Courts have nothing to do with the consequences. See *Rex* v. *Burrell*, 12 A. & E. 460. "Neglect" means, in such a statute as this, the omission to do some duty which the party is able to do. *Per* Patteson, J., *Ib.* 468. "Where no *vis major* or inability intervenes, omitting to do what ought to be done is neglect." *Per* Williams, J., *Ib.* 469. "The defendant has contravened the Act without showing any lawful excuse. This is a neglect within the Act. Forgetfulness or carelessness is no such lawful excuse." *Per* Coleridge, J., *Ib.* The neglect may be wholly to do the duty, or to do it within the time limited in that behalf. Either is neglect within the meaning of this section. It is of the utmost importance, so far as the administration of the provisions of the Municipal and Assessment Acts is concerned, that things should be done when directed to be done. See *Hunt* v. *Hibbs*, 5 H. & N. 123; *Reg.* v. *Ingall*, 2 Q. B. D. 199. This section throughout, so far as neglect is concerned, applies rather to cases of mere neglect than of wilful neglect. The latter are specially provided for by subsequent sections. See sec. 227. The words of the sections are: "If *any* treasurer, assessor, &c., refuses or neglects," &c. So the words of the next section are: "If *an* assessor neglects or omits to perform *his* duties, the *other* assessor," &c. It would seem that the penalty or forfeiture is a personal one attaching to *each* person in default. See *Rex* v. *Share*, 3 Q. B. 31; see also, *Clarke* v. *Gant*, 8 Ex. 252. Each is to be liable for such sum as the Court shall order, not

their duty, and how enforced.

competent jurisdiction in the county in which he is treasurer, assessor, clerk or other officer, forfeit to Her Majesty such sum as the Court may order and adjudge, not exceeding $100. R. S. O, 1877, c. 180, s. 189.

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exceeding one hundred dollars. A declaration treating two defendants as jointly liable for a penalty where there was a several duty and a several penalty, was held bad on demurrer. *Metcalfe q. t.* v. *Reeve*, 6 U. C. Q. B. 263. In giving judgment, Sir John B. Robinson said: "They (the defendants, who were magistrates, sued for not returning a conviction) cannot commit a *joint* offence, and be subject to *one* penalty, because *neither* transmitted it." *Ib.* 264. So where it is the duty of two assessors to return an assessment roll by a fixed day, it would seem that they should not be prosecuted jointly, but severally. *Reg.* v. *Snider*, 23 U. C. C. P. 330. It is a personal penalty for a personal default. *Ib.* It is said that the penalty or forfeiture is to be "upon conviction thereof before any Court of competent jurisdiction in the county." Does this mean a civil or a criminal Court? The words of sect. 176 of the 29 & 30 Vict. cap. 53, were, "Before the Recorder's Court of City, or before the Court of General Quarter Sessions of the County." These words were omitted from these sections, and more general words substituted. It is by sub-section 30 of sec. 8 of the Interpretation Act of Ontario, declared that "where a pecuniary penalty or a forfeiture is imposed for a contravention of any Act, then if no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before a Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of one credible witness other than the plaintiff or party interested." If the forfeiture were by this Act fixed, there would be strong ground for the argument that the amount of the forfeiture under this section is recoverable by action in a Court of civil jurisdiction. But the difficulty in the way of giving full effect to such an argument arises from the fact that the forfeiture is to be "*such sum* as the *Court* may order and adjudge, not exceeding $100." See *Gee* v. *Wilden*, Lutw. 1320; *Wood* v. *Searl*, Bridg. 139; *Butcher's Co.* v. *Bullock*, 3 B. & P. 434; *Piper* v. *Chappell*, 14 M. & W. 624; see further, Grant on Corporations, 84; note *w* to sub. 17 of sec. 479 of the Municipal Act, and *o* to sec. 230 of this Act. If it could be said to be "*summarily* imposed," within the meaning of sec. 252 it might be levied and collected by distress and sale of the offender's goods under authority of a warrant issued by a Justice of the Peace. But it is held that no new offence is cognizable before a Justice of the Peace unless the jurisdiction is expressly conferred by Act of Parliament. See note *h* to sec. 252. The Court of Common Pleas held that, in the absence of further legislation, the omission of assessors to return the roll by the day limited for the purpose is not an indictable offence. *Reg.* v. *Snider*, 23 U. C. C. P. 330. "The defendants in this case are indicted and found guilty not for wilful contravention of any statute, (being acquitted on the counts charging wilful default,) but merely for unlawfully and contrary to the

Other assessors may act for those in default.

226. If an assessor neglects or omits to perform his duties, the other assessor, or other assessors (if there be more than one for the same locality), or one of such assessors, (*d*) shall, until a new appointment, perform the duties, and shall certify upon his or their assessment roll the name of the delinquent assessor, and also, if he or they know it, the cause of the delinquency; (*e*) and any council may, after an assessor neglects or omits to perform his duties, appoint some other person to discharge such duties; (*f*) and the assessor so appointed shall have all the powers and be entitled to all the emoluments which appertain to the office. (*g*) R. S. O. 1877, c. 180, s. 190.

Punishment of clerks, assessors, etc., making fraudulent assessments, etc.

227. If any clerk, treasurer, assessor, or collector, acting under this Act, makes an unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or fraudulently omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, (*h*) he shall, upon

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statute neglecting to return the roll by the first of May; in fact for a mere non-feasance. Such an omission—in no way criminal in itself—cannot, we think, be treated as a misdemeanour or any species of criminal offence, unless declared to be such by competent legislative authority." *Per* Hagarty, C. J., *Ib.* p. 336. The legislature of Ontario has since declared, that "where a pecuniary penalty or forfeiture is imposed by an Act of this Province, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition, or in lieu of the penalty or forfeiture, and no other mode is by the Act expressly prescribed for the recovery of the penalty or forfeiture, the same may be recovered upon indictment in the High Court of Justice or General Sessions of the Peace." R. S. O. c. 1, s. 8, sub-s. 31.

(*d*) The duty is apparently a several—not a joint one. See the last note.

(*e*) The obligation of the "*other* assessor" or assessors, under the circumstances stated, to do what is required of him or them, is as much a duty as any duty primarily imposed on him or them under this Act.

(*f*) The power to appoint involves the power to remove, and neglect or omission to perform specified duties is a just cause of removal. See note *e* to sec. 279 of the Municipal Act.

(*g*) See note *q* to sec. 179.

(*h*) Cases of refusal or mere neglect, are provided for by sec. 225. This section is intended for the punishment of misconduct still more reprehensible than any provided against in that section. In Bac.

conviction thereof before a Court of competent jurisdiction, (*i*) be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, in the common gaol of the county or city, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. (*j*) R. S. O. 1877, c. 180, s. 191.

What shall be evidence of fraudulent assessments.

228. Proof, to the satisfaction of the jury, that any real property was assessed by the assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. (*k*) R. S. O. 1877, c. 180, s. 192.

Abr. "Offices and Officers," 181, it is said that, "if an officer acts contrary to the nature and duty of his office, or if he refuses to act at all in these cases, the office is forfeited." In *Phillips* v. *Bury*, 1 Ld. Rayd. 5, it was held that contumacy is a good ground for the deposition of an officer. In *Rex* v. *Wells*, 4 Bur. 1999, 2004, Lord Mansfield said: A "*general* neglect or *refusal* to attend the duty of such an office, is a reason of a forfeiture; so a *determined* neglect, a *wilful* refusal." By sec. 6 of 1 W. & M. ch. 21, it is declared that, "if any Clerk of the Peace shall misdemean himself in the execution of the said office, and thereupon a complaint and charge, in writing, of such misdemeanour shall be exhibited against him to the Justices of the Peace in their General Quarter Sessions, it shall be lawful for the said Justices, or the major part of them, from time to time, upon examination and due proof thereof, openly, in their said General Quarter Sessions, to suspend or discharge him from the said office." In *Wilde* v. *Russell*, L. R. 1 C. P. 722, 737, Willes, J., said: "The law upon the subject of forfeiture of an office is to be found in Com. Dig. 'Officer K,' where it is laid down that an officer forfeits his whole office by non-user or abuser of the office by him or his deputy. In some such sense as this, and not merely in a criminal sense, is the word misdemeanour used in this section, sec. 6 of 1 W. & M. ch. 21, and there can be no doubt, therefore, that an absolute and persistant refusal by the clerk of the peace to enter an order of sessions is a misdemeanour in his office. I entirely agree with Mr. Chambers that a mere delay in acting upon such an order, or even a strong remonstrance against it by the clerk of the peace, would not amount to a misdemeanour so as to work a forfeiture of the office." "Wilfully," may be here read as meaning wantonly or persistently. See *per* Bramwell, B., in *Smith* v. *Barnham*, 1 Ex. D. 423, 424. By R. S. C. cap. 173, s. 25, "Every wilful violation of any Act of the Parliament of Canada, or of the Legislature of any Province of Canada, which is not made an offence of some other kind, shall be a misdemeanour, and punishable accordingly." See *Reg.* v. *Snider*, 23 U. C. C. P., 330, 336.

(*i*) *Competent jurisdiction.* See note *c* to sec. 225.

(*j*) See note *o* to sec. 230. See also, *In re Slater* v. *Wells*, 9 U. C. L. J. 21.

(*k*) This section does not justify an assessor in assessing property

Punishment of culpable assessors.

229. An assessor convicted of having made any unjust or fraudulent assessment, shall be sentenced to the greatest punishment, both by fine and imprisonment, allowed by this Act. (*l*) R. S. O. 1877, c. 180, s. 193.

Penalty for not making and completing assessment rolls by the proper time Rev. Stat. c. 52.

230. With reference to *The Jurors' Act*, if any assessor of any township, village, or ward, except in the cases provided for by sections 52 and 54 of this Act, neglects or omits (*m*) to make out and complete his assessment roll for the township, village or ward, and to return the same to the clerk of such township or village, or of the city or town in which such ward is situated, or to the proper officer or place of deposit of such roll, on or before the 1st day of September of the year for which he is assessor, (*n*) every such assessor so offending shall forfeit for every such offence the sum of $200, one moiety thereof to the use of the municipality and the other moiety, with costs, to such person as may sue for the same in any Court of competent jurisdiction; (*o*) but nothing herein contained shall be construed to relieve any assessor from the obligation of returning his assessment roll, at the period required elsewhere by this Act, and from the

Not to impair any other liability.

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thirty per cent. less or more than its true value. True value is what is required. But where the departure from the true value is so great as the per centage specified, the fact of such a departure is made *prima facie* evidence of an unjust or fraudulent assessment. See note *k* to sec. 26. Strictly speaking, the value of land, like any other commodity, is the price it will bring in the market at the time it is offered for sale. See *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284. But before any man can be convicted, under this section, the jury must be satisfied of the actual value of the property in question; and when it has been arrived at, a valuation greater or less than it by thirty per cent. is made *prima facie* evidence that the assessment was unjust or fraudulent. It is of course in the power of the accused, by proof of the circumstances under which the assessment was made, to rebut the *prima facie* case so established. See *Churcher* v. *Cousins*, 28 U. C. Q. B. 540.

(*l*) See sec. 227.

(*m*) *Neglects* or *omits*. See note *c* to sec. 225.

(*n*) See note *g* to sec. 248 of the Municipal Act.

(*o*) The County Court has now jurisdiction in penal actions. *Brash q. t. v.* v. *Taggart*, 16 U. C. C. P. 415. The statute 18 Eliz. cap. 5, prohibits the compromise of such actions without the leave of the court, *Bleeker* v. *Myers*, 6 U. C. Q. B. 134, and in one case leave was given on paying the Crown's share into court. *May qui tam* v. *Dettrick*, 5 O. S. 77. Where it clearly appeared on the face of the declaration, that the consideration of the defendant's promise was a compromise of such an action without leave of the Court,

penalties incurred by him by not returning the same accordingly. (*p*) R. S. O. 1877, c. 180, s. 194. *See also Rev. Stat.* c. 52, s. 171 (3).

Proceedings for compelling collectors to pay over money collected to the proper treasurer.

231. If a collector refuses or neglects (*q*) to pay to the proper treasurer, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, (*r*) the treasurer shall, within twenty days after the time when the payment ought to have been made, (*s*) issue a warrant, under his hand and seal,

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brought by the plaintiff as a common informer against defendant, the consideration was held to be illegal, and the declaration bad. *Hart* v. *Myers*, 7 U. C. Q. B. 416. The verdict of a jury for defendant, in a penal action, on a question of fact properly left to them, is conclusive. See *Hall* v. *Green*, 9 Ex. 247; *Gough* v. *Hardman*, 6 Jur. N. S. 402; *McLellan qui tam* v. *Brown*, 12 U. C. C. P. 542; *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284. No damages are recoverable for the detention of the debt, because the debt is not due till judgment. See *Frederick* v. *Lookup*, 4 Burr, 2018; *Cuming* v. *Sibly*, *Ib.*, 2489.

(*p*) See note *g* to sec. 240 of the Municipal Act.

(*q*) Refuses or neglects. See note *c* to sec. 225.

(*r*) See secs. 132 and 135.

(*s*) *i. e.* "*Within* twenty days *after the time* when the payment *ought to have been made.*" These words are the same as used in the corresponding sections 177 of Con. Stat. U. C. cap. 55, and sec. 182 of 29 & 30 Vict. cap. 53. The time within which the warrant must, under this section, be issued, is involved in considerable doubt. In *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94, the only case in which the question has arisen, the only two Judges who expressed opinions on the point very materially differed in their views. The collector, in that case, was appointed for the years 1864 and 1865. In January 1865, he was authorized to continue the collection of the taxes for 1864 until 1st May, 1865, and in January, 1866, was authorized to continue "so long as he should be recognized by the municipality of the said township." He did not return the rolls until April, 1867. A large sum for each of the years 1865 and 1866 appeared to be unaccounted for. On 2nd April, the township treasurer, under a resolution of the council, demanded payment, and on 6th of same month issued his warrant. The question raised was, as to the validity of the warrant. Chief Justice Richards, in delivering judgment, said, "The cases referred to by Mr. Harrison decide that the collector, while he retained the roll, had power to collect the taxes unpaid that were to be levied under it after the time mentioned in the statute (14th December) for the return of the roll, when the time had not been enlarged by the council of the municipality when the distress of the taxes was made. The effect of the decisions seems to be that as long as the collector retained the roll, and was an officer of the municipality, he might collect the taxes mentioned in it, and having collected the taxes he and his sureties were liable

directed to the sheriff of the county or city (as the case may be), commanding him to levy of the goods, chattels, lands and tenements of the collector and his sureties, such sum as

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on their bond for not paying them over. The question here is, whether the warrant authorized by the 182nd section of the statute 29 and 30 Vict. c. 53 and C. S. U. C. cap. 55, sec. 177, can be issued at any time when *more* than twenty days have passed after the collector was *bound* to return his roll . . . . To wit, the 14th December, or the 1st April or May of the year for which the taxes were to be collected, or in the following year as to the last mentioned days. The section speaks of the collector refusing or neglecting to pay to the proper treasurer or other person legally authorized to receive the same, the sums contained on his roll, or duly account for the same as uncollected. Then the treasurer or chamberlain shall, '*within twenty days after the time* when the payment ought to have been made, issue a warrant to levy such sum as remains unpaid and unaccounted for.' What is the *time* when the payment ought to have been made to enable the municipality to exercise the large and unusual powers conferred on them by the section referred to? The only *time* mentioned in the statute then in force was the 14th day of December, or such other day as the municipal council of the county may appoint, not later than the 1st day of May in the next year. Now, here no other day than the 14th of December was appointed for the return of the rolls or the paying over of the money, and the power to issue the warrant was not exercised within twenty days of that time. . . . Another question to be considered is, what do the words 'within twenty days after the time when the payment ought to have been made,' mean? Are they to be interpreted *literally?* or is the true meaning that the warrant is not to issue until the *expiration* of the twenty days from the time? . . . I think the safest rule to lay down, and the one more in accordance with the true meaning of the statute, and the general doctrine as to the view taken of extraordinary and unusual remedies given to enforce the collection of money, is, to hold the parties to the *strict letter* of the law on the subject." *Ib.* 101, 102, 103, 104. Mr. Justice Wilson held a contrary view. He said: "It is provided by 29 & 30 Vict. cap. 53, sec. 182, that if a collector refuses or neglects to pay the proper treasurer the sums contained in his roll, the treasurer shall, 'within twenty days after the time the payment ought to have been made," issue a warrant. Here, no precise day being fixed for paying over the collections, a demand was required to be made on him to pay over before he could be considered as in default. The demand on the 2nd of April fixed the time for payment. For the first time properly under the two rolls the collector made default in payment, according to the extended time. On the 6th of April, 1867, the warrant to sell the goods and lands of the collector and his sureties, for defalcations under both rolls, issued and was delivered to the sheriff. The statute says: 'The treasurer shall, within twenty days after the time when the payment ought to have been made, issue a warrant.' It issued *within twenty days* after the demand on the 2nd of April. Is that the time when the payment ought to have been made? I think the party would be entitled to a reasonable time after the demand within

remains unpaid and unaccounted for, with costs and to pay to the treasurer the sum so unaccounted for, and to return the warrant within forty days after the date thereof. R. S. O. 1877, c. 180, s. 195.

Warrant to be delivered to sheriff, etc.

232. The treasurer shall immediately deliver (*t*) the warrant to the sheriff of the county, as the case may require. R. S. O. 1877, c. 180, s. 196.

Sheriff, etc., to execute it, and pay money levied.

233. The sheriff to whom the warrant is directed shall within forty days, cause the same to be executed and make

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which to pay. Perhaps three days would be a reasonable time. If so, the warrant on the 6th of April, 1867, is all right, if the warrant is to be issued *not later* than twenty days from the time of default. But does the statute mean that the warrant is to issue only within the twenty days? If so, this warrant may issue the very day after the payment should have been made, and cannot issue after these twenty days have expired. Or does it mean that the warrant shall *not* be issued for twenty days after the default was made? In *Rex* v. *Ireland*, 3 T. R. 512, the words on which the question arose were as follows: 'That the prosecutor for the recovery of such costs shall *within ten days* after demand made of the defendant and refusal of payment, have an attachment granted against the defendant.' *Only* eight days had elapsed since the demand. The court said: 'Though the words of the statute were, *within* ten days," they had always been understood to mean that ten days must elapse before the attachment could be granted; otherwise instead of the indulgence of the ten days supposed to be offered by the Legislature, the party would be liable to an attachment *immediately* after a demand and refusal.' And they refused the motion for the attachment. * * * I am of opinion the collector had until the 2nd April, 1867, within which to pay, the demand on that day determining his right to any further day; and, upon the authorities the warrant by way of execution which issued on the 6th of April, having issued *before* the twenty days after default to pay had elapsed, was improperly, because prematurely, issued." *Ib.* 108, 109, 110. Morrison, J., who during the argument referred to *O'Meara* v. *Foley*, Ir. L. R. 4 C. L. 116, concurred in opinion with Wilson, J. The result was, that the warrant was held by the Court to be void, because issued *too soon*. The warrant must be under the *hand* and *seal* of the treasurer. See note *g* to sec. 160.

(*t*) "*Immediately deliver*," *&c.* It is of the greatest importance that moneys due to a municipal corporation for taxes or rates should be paid with as little delay as possible. This is necessary in order to enable the corporation to pay its officers and keep faith with creditors. Hence it is that sureties are necessary, secs. 223, 224, and that so stringent provisions, are enacted against collectors and others whose duty it is to collect and pay over taxes, and that the very summary remedy is provided by the preceding section, against the goods, chattels, lands and tenements of the collector, *and of his sureties*. See notes to sec. 231.

return thereof to the treasurer, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation as upon writs of execution issued out of Courts of Record. (*u*) R. S. O. 1877, c. 180, s. 197.

Mode of compelling sheriff, etc., to pay over.

234. If a sheriff refuses or neglects to levy any money when so commanded, or to pay over the same, or makes a false return to the warrant, or neglects or refuses to make any return, or makes an insufficient return, the treasurer may, upon affidavit of the facts, (*v*) apply in a summary manner to the High Court or to a Judge thereof, for an order *nisi* or summons calling on the sheriff to answer the matter of the affidavit. R. S. O. 1877, c. 180, s. 198.

When returnable.

235. The order *nisi* or summons shall be returnable at such time as the Court or Judge directs. R. S. O. 1877, c. 180, s. 199.

Hearing on return.

236. Upon the return of the order *nisi* or summons, the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleading, to hear and determine the matters of the application. (*w*) R. S. O. 1877, c. 180, s. 200.

Fi. Fa. to the coroner to levy the money.

237. If the Court or Judge is of opinion that the sheriff has been guilty of the dereliction alleged against him,

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(*u*) A sheriff is not entitled to poundage on a writ of execution, unless he actually levy, that is, make the money. *Buchanan* v. *Frank*, 15 U. C. C. P. 196. If the claim be settled by means of the pressure of the writ, the sheriff is entitled to reasonable compensation in the nature of poundage. See *Michie* v. *Reynolds*, 24 U. C. Q. B. 303; *Hamilton and Port Dover R. W. Co.* v. *Gore Bank*, 20 Grant 202; *Bissicks* v. *Bath Colliery Co.*, 2 Ex. D. 459; 3 Ex. D. 174; *Consolidated Bank* v. *Bickford*, 7 P. R. 712.

(*v*) The application is to be made "upon affidavit of the facts." If the affidavit be deemed sufficient, the court or judge will grant an order *nisi* or summons, returnable at such time as may be directed, to answer the matter of the affidavit. See sec. 235.

(*w*) It is enacted that the court or a judge may proceed in a summary manner *to hear and determine* the matters of the application. See note to sec. 74. Apparently as much power is given to the judge as the Court. The jurisdiction is a statutable one, and in the absence of a provision for an appeal from the decision of the judge or the Court, it may be argued there is no appeal. The point is as yet undecided under the statute. See *In re Allen*, 31 U. C. Q. B. 458, under corresponding words in Con. Stat, U. C. c. 74, sec. 1.

the Court or Judge shall order the proper officer of the Court to issue a writ of *fieri facias*, (*x*) adapted to the case, directed to a coroner of the county in which the municipality is situate, or to a coroner of the city or town (as the case may be) for which the collector is in default. (*y*) R. S. O. 1877, c. 180, s. 201.

Tenor of such writ.

Execution thereof.

Fees.

238. The writ shall direct the coroner to levy of the goods and chattels of the sheriff the sum which the sheriff was ordered to levy by the warrant of the treasurer, together with the costs of the application and of the writ and of its execution; (*a*) and the writ shall bear date on the day of its issue, and shall be returnable forthwith on its being executed; (*b*) and the coroner, upon executing the same, shall be entitled to the same fees as upon a writ grounded upon a judgment of the Court. (*c*) R. S. O. 1877, c. 180, s. 202.

Penalty on sheriff if no other imposed.

239. If a sheriff wilfully omits (*d*) to perform any duty required of him by this Act, and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of $200, to be recovered from him in any Court of competent jurisdiction at the suit of the treasurer of the county, city or town. (*e*) R. S. O. 1877, c. 180, s. 203.

Payment of money collected for the Province.

240. All moneys assessed, levied and collected for the purpose of being paid to the Treasurer of the Province, or to any other public officer, for the public uses of the Province or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied, and collected by, and accounted for and paid over, to the same persons, in the same manner, and at the same time, as taxes imposed on the same property for county, city or town purposes, and shall be deemed and taken to be moneys collected

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(*x*) This writ is against the sheriff's own proper goods and chattels.

(*y*) A writ of execution directed to no one is a nullity. *Wood* v. *Campbell*, 3 U. C. Q. B. 269.

(*a*) See note *y* to sec. 237.

(*b*) See note *t* to sec. 232.

(*c*) See note *u* to sec. 233.

(*d*) *Wilfully* omits. See note *h* to sec. 227.

(*e*) See note *o* to sec. 230.

for the county, city, or town, so far as to charge every collector, or treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the county, city or town. R. S. O. 1877, c. 180, s. 204.

How money collected for county purposes to be paid over.

241. All moneys collected for county purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the collector to the township, town, or village treasurer, and by him to the county treasurer; and the corporation of the township, town, or village shall be responsible therefor to the corporation of the county. R. S. O. 1877, c. 180, s. 205.

Collectors or treasurers bound to account for all moneys collected by them.

242. Any bond or security given by the collector or treasurer to the corporation of the township, town, or village that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for county purposes, or for any of the purposes mentioned in section 240. (*f*) R. S. O. 1877, c. 180, s. 206.

Local treasurer to pay over county moneys to county treasurers.

243. The treasurer of every township, town, or village shall, within fourteen days after the time appointed for the final settlement of the collector's rolls, (*g*) pay over to the treasurer of the county all moneys which were assessed and by by-law required to be levied and collected in the municipality for county purposes, or for any of the purposes mentioned in section 240 of this Act. (*h*) R. S. O. 1877, c. 180, s. 207.

Mode of enforcing such payment.

244. If default be made in such payment, (*i*) the county treasurer may retain or stop a like amount out of any moneys

(*f*) It is not every bond or security given by a collector or treasurer that will come under this section, but only such as are conditioned or provided for accounting and paying over all moneys collected or received by the officers. These general words, when used, are, by the operation of this section, made to extend not only to moneys collected or received for county purposes, but for any of the purposes mentioned in sec. 240. See further, note *b* to sec. 248, and note *j* to sec. 249 of the Municipal Act.

(*g*) See note *s* to sec. 231.

(*h*) If default be made, summary proceedings may be had against the treasurer, such as are authorized by the Act against the collector Sec. 244.

(*i*) See sec. 243.

which would otherwise be payable by him to the municipality or may recover the same by an action against the municipality, or where the same has been in arrear for the space of three months, he may, by warrant under his hand and seal, reciting the facts, direct the sheriff of the county to levy and collect the amount so due with interest and costs from the municipality in default. (*k*) R. S. O. 1877, c. 180, s. 208.

Warrant to sheriff.

How the sheriff to levy.

Rev. Stat. c. 184, ss. 428 & 429.

245. The sheriff, upon receipt of the warrant, shall levy and collect the amount with his own fees and costs in the same manner as is provided by *The Municipal Act* in case of writs of execution. (*l*) R. S. O. 1877, c. 180, s. 209.

Treasurer, etc., to account for and pay over Crown moneys.

246 The county, city, or town treasurer shall be accountable and responsible to the Crown for all moneys collected for any of the purposes mentioned in section 240 of this Act, and shall pay over such moneys to the Treasurer of the Province. (*m*) R. S. O. 1877, c. 180, s. 210.

Municipality responsible for such moneys.

247. Every county, city, and town shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the treasurer of the county, city or town, in virtue of his office, shall be by him duly paid over and accounted for according to law. (*a*) R. S. O. 1877, c. 180, s. 211.

Treasurer, etc., responsible to County, etc.

Bonds to apply.

248. The treasurer and his sureties shall be responsible and accountable for such moneys in like manner to the county, city or town; and any bond or security given by them for the duly accounting for and paying over moneys coming into his hands belonging to the county, city, or town, shall be taken to apply to all such moneys as are mentioned in section 240, and may be enforced against the treasurer or

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(*k*) There is no limitation as to the time within which the warrant may be issued, and so the difficulty pointed out in note *s* to sec. 231, has, as to this warrant, been avoided.

(*l*) See sec. 428 of the Municipal Act and notes thereto.

(*m*) The liability of the collector, as declared in sec. 240, is here extended to the county or city treasurer, so as to make the collection of rates, or rather the paying over the money collected, as safe and expeditious as possible. See note *a* to sec. 247.

(*a*) The Non-Resident Land Fund is money which may be said to come into the hands of the treasurer within the meaning of this section, so as to make the corporation of the county responsible for the due payment and accounting of the same. See *Robertson* v. *Wellington*, 27 U. C. Q. B. 336.

his sureties, in case of default on his part. (*b*) R. S. O. 1877, c. 180, s. 212.

Bonds to apply to school moneys, etc.

249. The bond of the treasurer and his sureties shall apply to school moneys, and all public moneys of the Province; (*c*) and, in case of any default, Her Majesty may enforce the responsibility of the county, city, or town by stopping a like amount out of any public money which would otherwise be payable to the county, city, or town or to the treasurer thereof, or by action against the corporation. (*d*) R. S. O. 1877, c. 180, s. 213.

City, etc., responsible for default of treasurer, etc.

250. Any person aggrieved by the default of the treasurer, may recover from the corporation of the county, city, or town, the amount due or payable to such person as money had and received to his use. (*e*) R. S. O. 1877, c. 180, s. 214.

MISCELLANEOUS.

Penalty for tearing down notices, etc.

251. If any person wilfully tears down, injures, or defaces any advertisement, notice, or other document, which is required by this Act to be posted up in a public place for the information of persons interested, (*f*) he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the county, city, or town, be liable to a fine of $20, and, in default of payment, or for want of sufficient distress, to imprisonment not exceeding twenty days. (*g*) R. S. O. 1877, c. 180, s. 215.

(*b*) In an action by the the corporation of a county against their treasurer, on his bond, where it was proved that Government money, charged by him as paid over to the Government was not so paid, it was held unnecessary to shew a demand of the Government upon him for the money in order to entitle the corporation to recover. *Essex* v. *Park*, 11 U. C. C. P. 473.

(*c*) See the preceding note.

(*d*) See note *j* to sec. 249 of the Municipal Act.

(*e*) See note *a* to sec. 247.

(*f*) It is only when the person charged is proved *wilfully* to have torn down, injured or defaced an advertisement, notice or other document, under the Act, that he can be convicted. Where the act charged can be said to have been the result of mere neglect, see note *c* to sec. 225, and not of the will, there is no offence under this section.

(*g*) Direct imprisonment as a punishment under this section would

Recovery of fines and forfeitures hereby imposed.

252. The fines and forfeitures authorized to be summarily imposed by this Act, (*h*) shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods and chattels, under authority of a warrant of distress to be issued by a Justice of the Peace of the county, city or town; and, in default of sufficient distress, the offender shall be committed to the common gaol of the county, and be there kept at hard labour for a period not exceeding one month. (*i*) R. S. O. 1877, c. 180, s. 216.

Application of penalties.

253. When not otherwise provided all penalties recovered under this Act shall be paid to the treasurer to the use of the municipality. (*k*) R. S. O. 1877, c. 180, s. 217.

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be illegal. The only punishment authorized is a fine, to be collected by distress, and failing distress imprisonment not exceeding twenty days. See the following note.

(*h*) The authority of a Justice of the Peace summarily to try a new offence must be conferred by some statute. *Agard* v. *Candish*, Saville, 135. The authority is not to be enlarged by inference, *Ex parte Martin*, 6 B. & C. 80, not even in the case of an obvious omission. *Underhill* v. *Longridge*, 29 L. J. M. C. 65; see also, *Re Wainwright*, 12 L. J. Chan. 426: *S. C.* 1 Phil. 261. Thus an authority summarily to settle disputes between masters and servants is not, in the absence of express legislation, to be extended to the settlement of disputes between masters and household servants. See *Rex* v. *Hulcott*, 6 T. R. 583; *Branwell* v. *Penneck*, 7 B. & C. 536; *Hardy* v. *Ryle*, 9 B. & C. 603; *Lancaster* v. *Greaves*, *Ib.* 628. *Ex parte Johnson*, 7 Dowl. 702; *Kitchen* v. *Shaw*, 6 A. & E. 729.

(*i*) If the fine can be collected by distress of goods and chattels, it would be unlawful to imprison. The imprisonment is only authorized in default of sufficient distress, and then for a period not exceeding one month at hard labour. See *In re Slater and Wells*, 9 U. C. L. J. 21.

(*k*) This section also applies to all penalties recovered under the Act. All such, when not otherwise provided, must be paid to the treasurer, to the use of the municipality. The fine authorized by sec. 225 to be imposed on an assessor or clerk who refuses or neglects to perform any duty under the Act, is to be forfeited "to Her Majesty." See further, notes to sec. 423 of the Municipal Act.

SCHEDULE A.

(*Section* 3.)

FORM OF NOTICE BY NON-RESIDENT OWNER OF LAND REQUIRING TO BE ASSESSED THEREFOR.

To the Clerk and Municipality of

Take notice, that I (*or* we) own the land hereunder mentioned, and require to be assessed, and have my name (*or* our names) entered on the Assessment Roll of the Municipality of (*or* Ward of the Municipality of) therefor.

That my (*or* our) full name (*or* names), place of residence and Post Office address, are as follows :

A. B., of the Township of York, shoemaker, Weston Post Office, (*as the case may be*). Description of land (*here give such description as will readily lead to the identification of the land*).

Dated the day of , 18 .

C. D.

Witness, *G. H.*

R. S. O. 1877, c. 180, Sched. A.

SCHEDULE B.

(*Section* 47.)

TOWNSHIP OF . (*or* CITY, TOWN, OR VILLAGE) OF

STREET, SIDE

1	NAMES AND DESCRIPTION OF PERSONS ASSESSED.					DESCRIPTION AND VALUE OF REAL PROPERTY.						PERSONAL PROPERTY AND TAXABLE INCOME.			AGGREGATE VALUE OF ALL PROPERTY.	STATUTE LABOUR.	DOGS.	STATISTICS.											
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33 (a)
Number on roll.	Name and Post Office address of taxable party.	Occupation	Freeholder, householder, tenant, or farmer's son.	Age of assessed party.	Name and address of owner when person named in column two is not the owner.	School Section P. (Public School) S. (Separate School.)	Concession, street, square or other designation.	Number of lot, house, etc.	Number of acres, feet, etc.	Number of acres cleared in townships. Vacant or built on, in cities, towns and villages.	Value of each parcel of real property.	Total value of real property.	Value of personal property other than income.	Taxable income.	Total value of personal property and taxable income.	Total value of real and personal property and taxable income.	Number of persons from 21 to 60 years old.	Dogs.	Number of persons in family of person rated as resident.	Religion.	Number of cattle.	Number of sheep	Number of hogs.	Number of horses.	Birth.*	Death.*	Registered.*	Acres of wood land.	Acres of swamp, marsh, or waste land.	Acres of orchard and garden.	Number of acres under fall wheat.	Date of delivery of Notice under Section 47.
																	Total number of days' labour.	Bitches.							*Columns 26-28 apply to townships, towns and villages only.							

Take notice that you are assessed as above specified, for the year 18 . If you deem yourself overcharged, or otherwise improperly assessed, you or your agent may notify the Clerk of the Municipality (*or* Assessment Commissioner) in writing of such overcharge or improper assessment, within fourteen days after the day of (*insert date on which the Assessment Roll was returned*), and your complaint shall be tried by the Court of Revision for the Municipality of

(ENDORSED.)

SIR,—Take notice that I intend to appeal against this assessment, for the following reasons:—

I am Sir, your obedient servant,

A. B.,
Township Clerk
or Assessment Commissioner.

R. S. O. 1877, c. 180, Sched. B; 42 V. c. 32, s. 1; 44 V. c. 4, s. 1 c. 25, s. 1; 50 V. c. 7, s. 20.

(a) By 51 V. c. 29, s. 4, a column 34 is added. See sec. 14, sub-s. 3, p. 727.

SCHEDULE C.

(*Section* 64, *sub-s.* 14.)

FORM OF DECLARATION BY PARTY COMPLAINING IN PERSON OF OVERCHARGE ON PERSONAL PROPERTY;

I, *A. B. (set out name in full, with place of residence, business, trade, profession, or calling)* do solemnly declare that the true value of all the personal property assessable against me (*or as the case may be*), as trustee, guardian, or executor, etc., without deducting any debts due by me in respect thereof, is [*In case debts are owed in respect of such property: add*, that I am indebted on account of such personal property in the sum of]; and that the true amount for which I am liable to be rated and assessed in respect of personal property, other than income, is .

R. S. O. 1877, c. 180, *Sched.* C.

SCHEDULE D.

(*Section* 64, *sub-s.* 14.)

FORM OF DECLARATION OF PARTY COMPLAINING IN PERSON OF OVERCHARGE ON ACCOUNT OF TAXABLE INCOME.

I, *A. B. (set out name in full, with place of residence, business, trade, profession, or calling)*, do solemnly declare that my gross income, derived from all sources not exempt by law from taxation, is .

R. S. O. 1877, c. 180, *Sched.* D.

SCHEDULE E.

Section 64, *sub-s.* 14.

FORM OF DECLARATION BY PARTY COMPLAINING OF OVERCHARGE IN RESPECT OF PERSONAL PROPERTY AND TAXABLE INCOME:

I, *A. B. (set out name in full, with place of residence, business, trade, profession, or calling)* do solemnly declare that the true value of my personal property, other than income, is [*if there are debts, add*: that I am indebted on account of such personal property in the sum of ;] that my gross income derived from all sources, not exempt by law from taxation, is ; and that the full amount for which I am by law justly assessable, in respect to both personal porperty and income, is .

R. S. O. 1877, c. 180, *Sched.* E.

SCHEDULE F.

(*Section* 64, *sub-s.* 14.)

FORM OF DECLARATION BY AGENT OF A PARTY COMPLAINING OF OVER-CHARGE ON PERSONAL PROPERTY:

I, *A. B. (set out name in full, with place of residence, business, trade, profession and calling)* agent for *C. D. (set out name in full, with place of residence and calling of person assessed)*, do solemnly declare that the true value of all the personal property assessable against the said *C. D. (or as the case may be)*, as trustee, guardian, or executor, etc., is, . [*In case there are debts in regard to the property, add:* The said *C. D.* is indebted on account of such personal property in the sum of ;] and that the true amount for which the said *C. D.* is liable to be rated and assessed in respect of personal property, other than income, is ; and that I have the means of knowing, and do know the extent and value of the said *C. D.*'s personal property and debts in respect thereof.

R. S. O. 1877, c. 180, *Sched.* F.

SCHEDULE G.

Section 64, *sub-s.* 14.

FORM OF DECLARATION BY AGENT OR PARTY COMPLAINING OF OVER-CHARGE ON TAXABLE INCOME:

I, *A. B. (set out name in full with place of residence, business, trade, profession, or calling)*, agent for C. D. *(set out name in full, with place of residence, and calling of person assessed)*, do solemnly declare that the gross income of the said *C. D.*, derived from all sources not exempt from taxation by law, is ; and that I have the means of knowing, and do know, the income of the said *C. D.*

R. S. O. 1877, c. 180, *Sched.* G.

SCHEDULE H.

(*Section* 64, *sub-s.* 14.)

ORM OF DECLARATION BY AGENT OF PARTY COMPLAINING OF AN OVER-CHARGE IN RESPECT OF PERSONAL PROPERTY AND TAXABLE INCOME:

I, *A. B. (set out name in full, with place of residence, business, trade, profession, or calling)*, agent for *C. D., (set out name in full, with place of residence, and calling of person assessed)*, do solemnly declare that the true value of the personal property of the said *C. D.*, other than income, is : that the gross income of the said *C. D.*, derived from all sources not exempt by law from taxation, is ;

and that the full amount for which the said *C. D.* is justly assessable, in respect of both personal property and income, is . [*If there are debts on account of property, add:* That the said *C. D.* is indebted on account of such personal property in the sum of ;] and that I have the means of knowing, and do know, the truth of the matters hereinbefore declared.

R. S. O. 1877, c. 180, *Sched.* H.

SCHEDULE K.

(*Section* 183.)

FORM OF TAX DEED.

To all to whom these Presents shall come.

We, , of the of , Esquire, Warden (*or*, Mayor), and of the of Esquire, Treasurer of the County (*or* City or Town) of , Send Greeting :—

WHEREAS by virtue of a warrant under the hand of the Warden (*or* Mayor) and seal of the said County (*or* City *or* Town) bearing date the day of , in the year of our Lord one thousand eight hundred and , commanding the Treasurer of the said County (*or* City or Town) to levy upon the land hereinafter mentioned, for the arrears of taxes due thereon, with his costs, the Treasurer of the said County (*or* City *or* Town) did, on the day of , 18 , sell by public auction to , of the of , in the County of , that certain parcel or tract of land and premises hereinafter mentioned, at and for the price or sum of of lawful money of Canada, on account of the arrears of taxes alleged to be due thereon up to the day of , in the year of our Lord one thousand eight hundred and together with costs :

Now know ye, that we, the said and , as Warden (*or* Mayor) and Treasurer of the said County (*or* City *or* Town), in pursuance of such sale, and of *The Assessment Act*, and for the consideration aforesaid, do hereby grant, bargain, and sell unto the said , his heirs and assigns, all that certain parcel or tract of land and premises containing , being composed of (*describe the land so that the same may be readily identified.*)

In witness whereof, we, the said Warden (*or* Mayor) and Treasurer of the said County (*or* City *or* Town), have hereunto set our hands and affixed the seal of the said County (*or* City *or* Town), this day of , in the year of our Lord one thousand eight hundred and ; and the Clerk of the County (*or* City *or* Town) Council has countersigned.

A. B., Warden (*or* Mayor). [Corporate Seal.]
C. D., Treasurer.

Countersigned,
E. F., Clerk.

R. S. O. 1877, c. 180, *Sched.* K.

R. S. O. Cap. 194.

An Act respecting the Sale of Fermented or Spirituous Liquors.

SHORT TITLE, s. 1.
INTERPRETATION, s. 2.
LICENSE COMMISSIONERS, s. 3.
Powers, ss. 4, 5.
INSPECTORS, ss. 6, 7.
ISSUE OF LICENSES, ss. 8-17.
TAVERN LICENSES, ss. 18-30.
Number, ss. 18-26.
Accommodation required, ss. 27-29.
Security, s. 30.
SHOP LICENSES, ss. 31-33.
LICENSES BY WHOLESALE, ss. 34-36.
TRANSFER OF LICENSES, s. 37.
REMOVAL OF LICENSES, ss. 38, 39.
RE-ISSUE OF LAPSED LICENSE, s. 40.
DUTIES PAYABLE, ss. 41-44.
LICENSE FUND, ss. 45, 46.
REGULATIONS AND PROHIBITIONS:
License to be kept exposed, s. 47.
Notice of being licensed, s. 48.
Liquors not to be sold or kept for sale without license, ss. 49, 50.
Sale by brewers and chemists, ss. 51, 52.
Sale by clubs, s. 53.
Sale on Saturday night and on Sunday, ss. 54-56.
Sales on polling days, s. 57.
Obtaining liquor at prohibited times an offence, s. 58.
Sale from ships in port, s. 59.
Liquor sold under shop or wholesale license not to be drunk on premises, ss. 60, 61.
Sale to unlicensed persons, s. 62.
One bar only, s. 63.
Separate entrance to bar, s. 64.
Licensee not to purchase or receive in pledge wearing apparel, etc., s. 65.
PENALTIES:
Taking money for license certificate, report, etc., s. 66.
Issuing license contrary to Act, s. 67.
Municipal officers and members of councils, ss. 68, 69.
Selling without license, s. 70.
Selling on Saturday night or on Sunday, s. 71.
Refusing lodging, s. 72.
Permitting drunkenness, s. 73.
Using internal communications with other premises, ss. 74, 75.
Supplying liquor to persons apparently under age of 16, s. 76.
Allowing liquor to be unlawfully consumed on premises, s. 77.
Drinking liquor on premises where bought, s. 78.
Keeping disorderly house, s. 79.
Harbouring constables on duty, s. 80.
Compromising prosecutions, ss. 81, 82.
Disqualification of licensee, s. 83.
Tampering with witness, s. 84.
Penalty for violations of law not specially provided for, s. 85.
Terms of imprisonment consecutive, s. 86.
Penalties not to be remitted, s. 87.

Recovery of penalties, s. 88.
Application of penalties, ss. 89, 90.
REVOCATION OF LICENSE BY COUNTY JUDGE, ss. 91, 92.
PROSECUTIONS, ss. 93-100.
PROCEDURE WHERE PREVIOUS CONVICTION CHARGED, s. 101.
FORM OF INFORMATIONS AND OTHER PROCEEDINGS, ss. 102, 103.
AMENDMENTS, ss. 104, 105.
EVIDENCE:
License, how proved, s. 106.
Regulations of commissioners, how authenticated, s. 107.
Presumption as to sale, s. 108.
Proof of sale, s. 109.
Light in bar evidence, of sale, s. 110.
Evidence of sale by unlicensed person, s. 111.
Evidence against occupant, s. 112.
Presumptions conclusive unless rebutted, s. 113.
Proof of license to rest on defendant, s. 114.
Compelling attendance of witnesses and production of documents, ss. 115, 116.
Expenses of inspector, s. 117.
APPEALS, ss. 118-121.
CIVIL REMEDIES AGAINST TAVERN KEEPERS, s. 122.
RESTRICTION ON SALE TO INEBRIATES, ss. 123-125.
PAYMENT FOR LIQUOR ILLEGALLY SOLD NOT RECOVERABLE, s. 126.
OFFICERS TO ENFORCE LAW:
Appointment, ss. 127, 128.
Powers and duties, s. 129.
Right of search, ss. 130, 131.
Seizure of liquor, ss. 132, 133.
Prosecution of offenders, s. 134.
APPLICATION OF ACT TO UNORGANIZED DISTRICTS, ss. 135-140.
MUNICIPALITIES UNDER THE TEMPERANCE ACTS:
Acts not to apply, s. 141.
Commissioners' and inspectors' appointments and duties, ss. 142, 143.
Wholesale licenses necessary, s. 144.
Enforcing Acts, ss. 145-148.
Provision when law in force in a county, including a city or town in which law is not in force, s. 149.
Duties payable under C. T. Act, s. 150.
Application of license fund, s. 151.
Expenses of districts in which C. T. Act is in force, s. 152.
License districts may be formed where C. T. Act is in force, s. 153.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Liquor License Act.*" (*a*) R. S. O. 1877, c. 181, s. 1.

(*a*) The English Statute 24 Geo. II. cap. 40, is not in force in this Province. *Leith* v. *Willis*, 5 O. S. 101; *Heartley* v. *Hearns*, 6 O. S. 452: and the English Statute, 14 Geo. III. cap. 88 is now superseded. *Andrew* v. *White*, 18 U. C. Q. B. 170. It has been decided by the Judicial Committee of the Privy Council, on appeal from the Supreme Court, that the Dominion Parliament cannot legislate with respect to liquor licenses. The Dominion Parliament has power to prohibit the traffic in intoxicating liquors. *Russell* v. *Regina* 7 App. Cas. 829.

INTERPRETATION.

Interpretation.

2. Where the following words occur in this Act, or in the schedules thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears :

"Liquors" and "Liquor."

1. "Liquors" or "Liquor" shall include all spirituous and malt liquors, and all combinations of liquors and drinks and drinkable liquids which are intoxicating. (*b*)

"Tavern license."

2. "Tavern license" shall mean a license for selling, bartering or trafficking by retail in fermented, spirituous or other liquors, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same liquor is sold. (*c*)

"Shop license."

3. "Shop license" shall mean a license for selling, bartering or trafficking by retail in such liquors in shops, stores, or places other than inns, ale or beerhouses, or other houses of public entertainment, in quantities not less than three half-pints at any one time, to any one person, and at the time of sale to be wholly removed and taken away, in quantities not less than three half-pints at a time. (*d*)

"License by wholesale."

4. "License by wholesale" or "Wholesale license" shall mean a license for selling, bartering or trafficking, by wholesale only (*e*) in such liquors in warehouses, stores, shops, or places other than inns, ale or beerhouses, or other houses of public entertainment, in quantities not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen

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(*b*) Spirituous and malt liquors are assumed for the purpose of the Act to be intoxicating. All combinations of drinkable liquids which are intoxicating are placed on the same footing as spirituous and malt liquors. Whether a particular drinkable liquid is intoxicating or not, must be a matter for enquiry upon evidence to be adduced before the Justice or Justices whose duty it is to adjudicate upon the complaint. See *Harris* v. *Jenns*, 9 C. B. N. S. 152.

(*c*) A sale by any person licensed, in quantities less than authorized by his license is clearly a punishable offence. *Reg.* v. *Faulkner*, 26 U. C. Q. B. 529; *Reg.* v. *Denham*, 35 U. C. Q. B. 503.

(*d*) See note *c supra*. See also Schedule D, No. 7, as to form of information.

(*e*) See note *c supra*. See also, Schedule D, No. 8, as to form of information.

bottles of at least three half-pints each, or two dozen bottles of at least three-fourths of one pint each, at any one time. (*f*) R. S. O. 1877, c. 181, s. 2.

"Three half pints."

5. "Three half-pints" shall, where bottled liquor is sold, be held to be equivalent to five quarter pints Imperial measure. 44 V. c. 27, s. 23.

"License District."

6. "License District" shall mean the city, county, union of counties, or electoral district or districts, or any part of an electoral district, or a union of parts of two or more electoral districts, as the Lieutenant-Governor in Council may by order direct.

"Polling sub-division."

7. "Polling sub-division" shall mean the polling sub-division for the last general election for the district for the Legislative Assembly in which the licensed premises or the premises for which a license is sought are situated.

"Inspector."

8. "Inspector" shall mean an Inspector of Licenses appointed for a license district under this Act. 47 V. c. 34, s. 1, *part.*

"Canada Temperance Act."

9. "*The Canada Temperance Act*" shall extend to and include *The Canada Temperance Act, 1878.* 50 V. c. 33, s. 9.

Board of License Commissioners.

3. There shall be a board of license commissioners to be composed of three persons, to be appointed by the Lieutenant-Governor, for each city, county, union of counties, electoral district, or license district, as the Lieutenant-Governor may think fit; and any two of the said commissioners shall be a quorum, and each of them shall cease to hold office on the 31st day of December in each year, but he may be re-appointed; and the said office shall be honorary and without any remuneration. (*g*) R. S. O. 1877, c. 181, s. 3; 48 V. c. 43, s. 8, *part.*

(*f*) The Legislature of Ontario by 37 Vict. c. 32 made it obligatory upon brewers to take out licenses authorizing them to sell by wholesale. In *Reg.* v. *Taylor*, 36 U. C. R. Q. 183, this enactment was held, by the Court of Queen's Bench, to be *ultra vires;* but the Court of Appeal, *Ib.* 218, reversed the decision. An attempt was then made to carry the case for decision to the Supreme Court of Canada, but for technical reasons it failed. *Reg.* v. *Taylor*, 1 S. C. R. 65. The same point was afterwards raised in *Reg.* v. *Severn*, 2 S. C. R. 70, in which the Supreme Court held that the decision by the Court of Queen's Bench was correct.

(*g*) It is difficult for the municipal authorities to enforce regulations for the orderly keeping of licensed houses as well as to meet

Powers of the commissioners.

4. The board of license commissioners may at any time before the 1st day of May in each year, pass resolutions for regulating and determining the matters following, (*h*) that is to say :

Defining requisites for granting tavern and shop licenses.

1. For defining the conditions and qualifications requisite to obtain tavern licenses for the retail within the municipality, of spirituous, fermented or other manufactured liquors, and also shop licenses for the sale by retail within the municipality, of such liquors in shops or places other than taverns, inns, ale-houses, beer-houses, or places of public entertainment ;

Limiting number of licenses, etc.

2. For limiting the number of tavern and shop licenses respectively, and for defining the respective times and localities within which and the persons to whom such limited number may be issued within the year, from the 1st day of May of one year till the 30th day of April inclusive of the next year. R. S. O. 1877, c. 181, s. 4 (1, 2).

Exemption from having accommodation.

3. For declaring that in cities having a population according to the then last Dominion census of less than fifteen thousand, a number not exceeding three persons ; a population of between fifteen thousand and thirty thousand, a number not exceeding five persons ; a population of over thirty thousand, a number not exceeding ten persons ; and in towns having a population of over six thousand, a number not exceeding two persons qualified to have a tavern license, may be exempted from the necessity of having all the tavern accommodation required by law. 47 V. c. 34, s. 2.

Regulating taverns.

4. For regulating the taverns and shops to be licensed ;

Defining duties of inspectors.

5. For fixing and defining the duties, powers and privileges of the inspector of their district. R. S. O. 1877, c. 181, s. 4 (4, 5).

Penalties may be imposed by regulations.

5. In and by any such resolution of a board of license commissioners the said board may impose penalties for the infraction thereof. R. S. O. 1877, c. 181, s. 5.

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the devices parties may resort to for the purpose of evading and contravening them. *Per* Morrison, J., in *Reg.* v. *Belmont*, 35 U. C. Q. B. 298, 301. This difficulty on the part of municipal councils, was the cause of the passing of 39 Vict. cap. 26, s. 1 of which this and the sections following are a consolidation. See *per* Harrison, C. J., in *In re Brodie and Bowmanville*, 38 U. C. Q. B. 585. See further, sec. 142.

(*h*) It is not as a general rule, intended that the municipal councils and the license commissioners shall have concurrent powers. *In re*

INSPECTORS OF LICENSES.

Inspectors of Licenses, appointment powers and duty and security.

6. An inspector shall be appointed by the Lieutenant-Governor from time to time for each city, county, union of counties, electoral district, or license district, as the Lieutenant-Governor may think fit (*i*) and each inspector shall, before entering upon his duties, give such security as the Provincial Secretary may require for the due performance of his said duties (*k*) and for the payment over of all sums of money received by him according to the provisions of this Act; and the salary of every inspector shall be fixed by the Lieutenant-Governor in Council. (*l*) R. S. O. 1877, c. 181, s. 6; 48 V. c. 43, s. 8, *part.*

Chief inspector may be appointed in Toronto.

7. A chief inspector may be appointed for the city of Toronto, and he shall have jurisdiction throughout the said city. He shall perform all the duties of an inspector and shall have all the rights, powers and authority thereof, (*m*) and shall be charged with the duty of seeing that this Act is enforced in the districts into which the said city is divided. He shall unless the Lieutenant-Governor otherwise directs, act as the secretary of the board of license commissioners, and, shall, in company with the inspector, visit and inspect all premises for which a license is sought, and shall perform such other duties as may be assigned to him by the board or by the Lieutenant-Governor in Council. 49 V. c. 39, s. 19.

ISSUE OF LICENSES.

Issue of licenses.

8—(1) The Lieutenant-Governor in Council may direct the issue of licenses on stamped paper, written or printed, or partly written and partly printed, of the several kinds here-

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Brodie and Bowmanville, 38 U. C. Q. B. 580; *In re Arkell and St. Thomas*, *Ib.* 594. The Provincial Legislature has power to entrust to commissioners authority to enact regulations of the character specified in this section, and to impose penalties as provided in sec. 5. *Hodge* v. *Reg.*, 7 A. R. 246; 9 App. Cas. 117.

(*i*) Although the inspector is appointed by the Executive it is in the power of the license commissioners, also appointed by the Executive, to pass by-laws for fixing and defining the duties, powers and privileges of the inspector for their district. See sec. 4, sub-s. 5. The duty of enforcing the observance of the Act for the prevention of accidents by fire in hotels, &c., is imposed on the inspector by 51 Vict. c. 34, sec. 7.

(*k*) As to the duties of the inspector. See sec. 11 and notes thereto.

(*l*) While a salary may be allowed to the inspector, the office of commissioner is honorary. See sec. 3.

(*m*) See sec. 11 and notes thereto.

inbefore mentioned; and the licenses shall be signed by the Provincial Secretary and dated as of the 1st day of May in each year, and shall thence continue in force for one year, and shall expire on the 30th day of April in the next ensuing year. (*n*)

After the 1st of May.

(2) After the 1st of May, tavern and shop licenses may be issued between the 1st and 15th days of May in each year; and licenses by wholesale may be issued between the first and last days of May in each year; and all such licenses shall be deemed to have been issued on the said 1st day of May. (*o*)

In special cases.

(3) Where special grounds are shewn, the license commissioners may direct one or more licenses to issue at any time after the said 1st day of May, if within the limit authorized by this Act; provided always that the petition or application therefor shall have been filed with the inspector on or before the 1st day of April next preceding. (*p*) R. S. O. 1877, c. 181, s. 7; 47 V. c. 34, s. 3.

Licenses, how issued.

9. Every license shall be issued, under the direction of the respective boards of license commissioners, by the inspector for the license district in which the tavern, shop, warehouse or other place to which the license is to apply is situate,

Vessel Licenses.

except in the case of licenses for vessels, which may be issued under the direction of the license commissioners by the inspector for any license district to or from any port in which the vessel sails, or at any port in which she calls. (*q*) R. S. O. 1877, c. 181, s. 8.

(*n*) The Temperance Act of 1864, provided that a by-law passed thereunder, should come into force from and after the first of March next, after communication thereof to the collector of inland revenue. The effect of such a by-law was to deprive persons licensed of the right to sell liquors during the last two months of their license. See *O'Neil and Oxford*, 41 U. C. Q. B. 170.

(*o*) The license, no matter whether issued between the first and fifteenth days of May, or between the first and last days of May, expires, under any circumstances "on the thirtieth day of April in the next ensuing year."

(*p*) The license commissioners are to be the judges of "the special grounds." The license when issued, even on special grounds, will not be in force beyond the 30th April next, after the date of its issue.

(*q*) The rule is to issue a license for sale of liquor at some particular place, but a vessel which sails from place to place, is a necessary exception to the rule. In the former case the license can only be issued under the direction of the board of license commissioners,

Regulation of sale of liquor on vessels.

10. The license commissioners may pass resolutions regulating the sale of liquor on vessels to which licenses may be issued under their authority during excursions and at other times; such resolutions shall, in order to their validity, be sanctioned by the Lieutenant-Governor in Council. 47 V. c. 34, s. 24, *part*.

No tavern or shop license to be granted except upon petition and report thereon.

11—(1) A license to sell spirituous, fermented or other manufactured liquors by retail, in any tavern, alehouse, beer-house, place of public entertainment or shop, shall not be granted (*r*) except upon petition by the applicant to the license commissioners of the district in which the license is to have effect, praying for the same; nor until the inspector, to be appointed as hereinbefore provided, has reported in writing to the license commissioners that the applicant is a fit and proper person to have a license and (in the case of a tavern license) has all the accommodation required by law, (*s*) and that the applicant is known to the inspector to be of good character and repute; (*t*) and every such report shall

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having jurisdiction over the place; in the latter, the license may be issued under the direction of the license commissioners by the inspector for any license district to or from any port in which the vessel sails, or at any port in which she calls. See also sec. 10.

(*r*) The granting of the license may be conditional. *Reg.* v. *Paton* 35 U. C. Q. B. 442. The granting or refusing of a license, is not a judicial act so as to be subject to review by the court on *certiorari*. See *Reg.* v. *Salford*, 18 Q. B. 687. If knowingly granted, when according to the provisions of the Act, it ought not to have been granted, the persons granting it are subject to prosecution and fine. See sec. 67.

(*s*) A license granted under circumstances which, by the Act should prevent its issue, would, in the face of the strong language used in the Act, appear to be void. See *Thompson* v. *Harvey*, 4 H. & N. 254. See further note *a* to sec. 12. Two things are necessary; first, the petition of the applicant; second, the report of the inspector. It is intended that the inspector shall in good faith, make the enquiries necessary to enable him to give the required certificate. See *Reg.* v. *Kensington*, 12 Q. B. 654. The duty to inspect is not one which the court will enforce by mandamus. *In re Baxter* v. *Hesson*, 12 U. C. Q. B. 139.

(*t*) The words, "character and repute," do not mean a man's real conduct and mode of life, but his reputation among his neighbours. He may be living in adultery, but if this fact is not generally known, he may still, by his neighbours, be esteemed a person of good character and repute. These words were introduced for the purpose of avoiding the evils which have been found to result from the multiplication of houses licensed to sell spirituous and fermented liquors, which in too many instances were found to be the resort of the

Report to be filed.

be duly filed by the license commissioners and shall remain open to the inspection of any ratepayer of the municipality or any Provincial officer. (*u*)

When petition for license to be presented.

(2) Every petition for a tavern license, which is to take effect on the 1st day of May in any year, shall be filed with the inspector for the license district wherein it is to have effect on or before the 1st day of April next preceding. (*v*)

Report not to be conclusive.

(3) The inspector shall not report in favour of any applicant other than the true owner of the business of the tavern or shop proposed to be licensed, (*w*) and his report shall be for the information of the license commissioners only, who shall nevertheless exercise their own discretion on each application. (*x*)

Report may be dispensed with.

(4) Where the applicant for a tavern or shop license resides in a remote part of the license district, or where for any other reason the license commissioners see fit, they may dispense with the report of the inspector, and act upon such information as may satisfy them in the premises. (*y*) R. S. O. 1877, c. 181, s. 9 (1-4).

Board to fix a day for considering applications.

(5) The board of license commissioners shall, on or before the 1st day of April, fix a day for considering applications

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profligate and the worthless. See *Reg.* v. *Leader*, 16 C. B. N. S. 584. In England a person convicted of felony, is for ever disqualified from selling spirits by retail. *Reg.* v. *Vine*, L. R. 10 Q. B. 195.

(*u*) The report ought to be held confidential, as it is for the use of the commissioners only, but as the effect of so dealing, might be productive of great abuse, provision is made for the inspection of the report by any ratepayer of the municipality or any provincial officer.

(*v*) This, it is apprehended, is only directory, in other words, that the commissioners may, after the day named, if they see fit, receive the petition. The limitation as to time is made for their convenience. If they see fit to waive it, no other person can well be allowed to complain.

(*w*) The intention is, that the true owner shall only be licensed; the certificate required is as to his character and repute. If the license were issued to a person other than the owner, there would be no guarantee for the proper conduct of the tavern or shop. See *Thompson* v. *Harvey*, 4 H. & N. 254.

(*x*) It is clear that the commissioners are not bound by the contents of the certificate, but may exercise their own judgment, making use of their own knowledge as to each application.

(*y*) The report of the inspector is merely the means to an end; the end may be attained by other means if the commissioners see fit.

for licenses, being not less than one week prior to the 1st day of May in each year, and the inspector shall publish, in at least two issues of a newspaper, published in the district, if there be one published therein, the date and place of such meeting at least fourteen days before the day of such meeting. The inspector shall cause a notice containing similar information to be fixed to or near the outer door of the building in which his office is situated.

Notice by inspector as to applications.

(6) The inspector shall, at least fourteen days before the first meeting of the board to consider applications, cause to be published in at least two issues of some newspaper published in the district, if there be one published therein, the name of each applicant for a license, who is not at the time of the making of such application a licensee under this Act, or who applies for the licensing of premises not then under license, the description of license applied for, and the place (described with sufficient certainty) where such applicant proposes to sell, and also the total number of tavern and shop licenses issued during the current license year and the total number of applications for the ensuing year. He shall also keep a list of all applications, to be entered in a book to be kept by him for the purpose, containing similar information, and the same shall be open to the public for inspection without charge.

Objections to applications.

(7) It shall be the right and privilege of any ten or more electors of any polling subdivision to object by petition, or in any similar manner, to the granting of any license within such subdivision.

(8) The objections which may be taken to the granting of a license may be one or more of the following:

As to character of applicant.

(*a*) That the applicant is of bad fame and character, (*z*) or of drunken habits, or has previously forfeited a license, or that the applicant has been convicted of selling liquor without a license within a period of one year; or that he has kept, within a period of two years, a place in which the illicit sale of liquors was frequent and notorious; or—

As to his premises.

(*b*) That the premises in question are out of repair, or have not the accommodation required by law, or reasonable accommodation if the premises be not subject to the said requirements; or

(*z*) See note *t* to sub-s. 1 of sec. 11.

As to the neighbourhood.

(c) That the licensing thereof is not required in the neighbourhood, or that the premises are in the immediate vicinity of a place of public worship, hospital, or school, or that the quiet of the place in which such premises are situate will be disturbed if a license is granted.

Hearing objectors.

(9) Any person who has signed a memorial against the granting of a license may be heard in opposition thereto by himself or his agent.

And those authorized by municipalities.

(10) The council of any city, town, incorporated village, or township may authorize any person to appear in a similar manner on behalf of the ratepayers of such city, town, incorporated village or township as to the granting of a license, and the person so authorized shall have a right to be heard before the board against the granting of such license.

As to objections to character.

(11) Unless at the instance of the board, no objection in respect of the character of any applicant shall be entertained until three days' notice has been given to the applicant. The notice may be served personally or left at the usual place of residence or business of the applicant. The service may be proved orally or by affidavit sworn before a Justice of the Peace or a commissioner for taking affidavits.

Board may notice matters not mentioned by objectors.

Notice to applicant in such cases.

(12) Notwithstanding anything in this Act contained, the board may, of their own motion, take notice of any matter or thing which, in their opinion, would be an objection to the granting of a license, although no notice or objection has been given or made as by this Act provided: in any such case the board shall notify the applicant, and shall adjourn their hearing of the application, if requested by him, for any period not exceeding fourteen days in order that any person affected by the objection may have an opportunity of answering the same.

Decision of board final.

(13) The decision of the board, when once announced by the chairman, shall not be questioned or reconsidered; provided, nevertheless, that in cases in which the decision of the board has not been unanimous, or in cases in which the person or persons affected by such decision, petition the board and allege facts or grounds for their consideration not formerly before them, the board may by resolution, in which all of the commissioners concur, decide to rehear the case. Where a rehearing is allowed, notice thereof shall be given by the inspector to at least one of the petitioners or his agent.

(14) No license shall be granted to any applicant for premises not then under license or shall be transferred to such premises if a majority of the persons duly qualified to vote as electors in the subdivision at an election for a member of the Legislative Assembly, petition against it, on the grounds hereinbefore set forth, or any of such grounds. In case of any dispute as to whether the number of electors who have signed such petition compose a majority of the said duly qualified electors of the subdivision, or, in case of a dispute as to whether any one or more persons who have signed the petition are duly qualified voters, the clerk of the municipality in which the subdivision is situate, shall take evidence upon oath, or otherwise, and determine the question in dispute, and he shall in such case certify to the board the number of duly qualified electors aforesaid for the subdivision and the number of such electors who have signed the petition, and his certificate shall be final and conclusive. Majority of electors may prevent license.

(15) Any petition against the granting of a license shall be lodged with the inspector at least four days before the said first meeting of the board to consider the application; and the inspector shall present the same to the board at the first meeting thereof. Time for filing.

(16) The inspector shall keep a list posted in his office for three days previous to the meeting of the board, of all certificates and petitions lodged with him as aforesaid, and every such petition or certificate shall be open for public inspection without fee. Posting list of petitions, etc.

(17) Every application for a license, and all objections to every such application, shall be heard and determined at a meeting of the board. Hearing and determining objections.

(18) Every such hearing shall be open to the public, and the board may summon and examine on oath such witnesses as they may think necessary, and as nearly as may be in the manner directed by any Act now or hereafter to be in force relating to the duties of Justices in relation to summary convictions and orders; and any member of the board may administer the oath: but nevertheless nothing herein contained shall prevent the board from retiring or sitting with closed doors while considering or preparing their decision or judgment in respect of any application or applications. Proceedings at hearings.

(19) Any meeting of the board for the consideration of applications may, at the discretion of the board, be adjourned Adjourning meetings.

from time to time to the same or any other place or building within the district.

Office of inspector.

(20) Where the inspector has not taken or set apart premises especially for the purposes of an office, the room or rooms in which he usually conducts his official business, whether at his residence or place of business, shall be deemed to be his office for the purposes of this Act.

Foregoing sub-sections declaratory only.

(21) The foregoing sub-sections of this section are declared to be obligatory on the board and inspector, but non-compliance therewith shall not invalidate the action of the board or inspector. Nothing in this sub-section contained shall authorize the granting of a license contrary to the provisions of sub-section 14. 47 V. c. 34, s. 4.

Mode of procedure in obtaining tavern or shop licenses.

12—(1) If upon application of any person requiring a tavern or shop license, it appears that such applicant is the true owner of the business of such tavern or shop, and has complied with the requirements of the law, and of any municipal by-laws in force in that behalf, and also with the regulations and requirements of the license commissioners, and is one of the persons designated or otherwise approved of by the license commissioners, the said license commissioners may grant such applicant a certificate under the hands of any two of them, stating that he is entitled to a license for a certain time, and for a certain tavern, inn, house or place of public entertainment or shop within the municipality, to be mentioned in such certificate. (*a*)

(2) The license duty shall then be paid by the applicant into such bank as may be designated by the Provincial Secretary, to the credit of the "License Fund Account," for the license district; and upon production by the applicant to the inspector of the certificate of the license commissioners, together with a receipt shewing payment in full of the duty to the credit of the license fund account, the inspector may

(*a*) It is in the discretion of the commissioners to grant or refuse the license. Therefore no action lies against them for the simple refusal of the license. *Bassett* v. *Godschall*, 3 Wils. 121, and in the absence of corruption there can be no criminal proceedings taken against them. *Rex* v. *Williams*, 3 Burr. 1317; *Rex* v. *Hann*, 3 Burr. 1716, and there is no provision, made for an appeal from their decision. See *Rex* v. *Middlesex*, 3 B. & Al. 938; *Reg.* v. *Deane*, 2 Q. B. 96; *Reg.* v. *Cockburn*, 4 E. & B. 265; *Reg.* v. *Ely*, 5 E. & B. 489; *Drake's Case*, L. R. 5 Q. B. 33. See further note *r* to sec. 11.

issue the license authorized by the license commissioners. (*b*) R. S. O. 1877, c. 181, s. 10.

No license to be granted for certain times and places.

13. The license commissioners shall not grant any certificate for a license, or any certificate whatsoever, whereby any person can obtain or procure any license for the sale of spirituous, fermented or intoxicating liquors, on the days of the Exhibition of the Agricultural Association of Ontario, the Industrial Exhibition of Toronto, or of any electoral district, or township, agricultural society exhibition, either on the grounds of such society, or within the distance of three hundred yards from such grounds. (*c*) R. S. O. 1877, c. 181, s. 11; 47 V. c. 34, s. 14.

No license to ferry boat.

14. No license shall hereafter be granted to or for any ferry boat. (*d*) 47 V. c. 34, s. 24, *part*.

No license to be granted to commissioner or inspector.

15. A tavern or shop license shall not be granted to or for the benefit of any person who is a license commissioner or inspector, and every license so issued shall be void. (*e*) R. S. O. 1877, c 181, s. 12.

License not to be issued for any premises owned by such person in his district.

16.—(1) A tavern or shop license shall not be issued for premises within any license district of which any of the license commissioners or of the inspectors for such district is the owner, and every license commissioner who knowingly grants a certificate for a license, and every inspector who knowingly issues a license for any such premises, contrary to the provisions of this section, shall incur a penalty of $500. (*f*) R. S. O. 1877, c. 181, s. 13.

(*b*) See sec. 45.

(*c*) A certificate for a license, granted in contravention of this section, would, it is presumed, be held void. See *Thompson* v. *Harvey*, 4 H. & N. 254. The Court refused to grant a mandamus to revoke a certificate for a license granted in contravention of a municipal by-law. See *Reg. ex rel. Gamble* v. *Burnside*, 8 U. C. Q. B. 263.

(*d*) See note *c* to sec. 13.

(*e*) A license granted when the Act provides that it shall not be granted would probably be void without any express enactment. See *Thompson* v. *Harvey*, 4 H. & N. 254.

(*f*) The penalty is a severe one, but it can only arise when the conduct of the commissioner or inspector is *knowingly* wrong. Where the illegal conduct is the result of ignorance or mere negligence, it is apprehended the section is inapplicable.

Last sub-section not to apply to companies in which commissioner, etc., is a shareholder.

(2) The preceding sub-section shall not extend or apply to premises owned or occupied by a joint stock company in which a license commissioner is a shareholder, but in every such case, and in every case where a license commissioner is the mortgagee of any premises or agent for the collection of rents in respect of any such premises, such license commissioner shall not, under a penalty of $500, vote upon any question affecting the granting of a license to the company or for premises owned or occupied by it, or for premises in respect of which he is such mortgagee or agent. (*g*) 46 V. c. 25, s. 1.

License limited to person and place for which it was granted, subject to ss. 37, 38.

17. Subject to the provisions of this Act as to removals (*h*) and the transfer of licenses, (*i*) every license for the sale of liquor shall be held to be a license only to the person therein named (*j*) and for the premises therein described, (*k*) and shall remain valid only so long as such person continues to be the occupant of the said premises and the true owner of the business there carried on. R. S. O. 1877, c. 181, s. 14.

TAVERN LICENSES.

Number.

Limitation of licenses.

18—(1) The number of tavern licenses to be granted in the respective municipalities shall not in each year be in excess of the following limitations : in cities, towns and incor-

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(*g*) A similar provision is contained in the Municipal Act, sec. 479, sub-s. 10 (*b*). Where three out of five of the members of a municipal council were disqualified from voting, a by-law passed by them granting a bonus to a stock company in which they were shareholders was held void. *In re Baird and Almonte*, 41 U. C. Q. B. 415.

(*h*) See sec. 38.

(*i*) See sec. 37.

(*j*) See note *w* to sec. 11.

(*k*) A license to sell spirituous liquors by retail, includes reasonable additions to the original premises, not diminishing the necessary accommodation, and it is a question of fact, whether or not after such additions the premises are substantially the same as those licensed. *Reg.* v. *Smith*, 15 L. T. N. S. 178 ; *Stringer* v. *Trustees of Huddersfield*, 33 L. T. N. S. 568 ; *Reg.* v. *Raffles*, 1 Q. B. D. 207. In England persons licensed to sell spirituous liquors by retail at particular places, are allowed without the necessity of a magistrate's license to sell at public fairs or public races. See *Boughey* v. *Rowbotham*, 15 L. J. N. S. 222 ; *Ash* v. *Lynn*, L. R. 1 Q. B. 270 ; *Hannant* v. *Foulger*, L. R. 2 Q. B. 399, but the law is different in this Province.

porated villages respectively, according to the following scale, that is to say, one for each full two hundred and fifty of the first one thousand of the population, and one for each full four hundred over one thousand of the population; (*m*) but in no case shall this limit authorize any increase in any municipality in excess of the number of licenses therein issued for the year ending the 1st day of March 1876, unless from the future increase of the population the license commissioners think a larger number has become necessary, but not in any case exceeding the limit imposed by this Act. In cities, towns and villages.

(2) In incorporated villages, being county towns, the limit may be five in number, (*n*) and in the town of Niagara Falls three hotels, near the Falls of Niagara, and in the town of Port Arthur three hotels, which may be licensed, may be excluded from the number which would otherwise be the maximum limit under this Act. (*o*) R. S. O. 1877, c. 181, s. 15; 49 V. c. 39, s. 21. Exceptions.

19—(1) The number of the population which is to determine the number of licenses at any time under this Act shall be according to the then last preceding census taken under the authority of the Dominion of Canada, except where the license commissioners are at any time of opinion that, owing to a large increase of population since such census, an increased number of licensed taverns is needed for the convenience and accommodation of travellers; and in that case, if the license commissioners so certify, and the council of the Manner of determining the population with a view to the number of licenses.

(*l*) This section prescribes the minimum number of licenses for each municipality. License commissioners have under sub-s. 2 of sec. 4, power to limit the number of licenses. They may, in the case of a particular municipality, limit the number to less than the maximum provided for by this section, but cannot exceed it.

(*m*) Take for example a city containing a population of 11,000:

First 1,000	4
Remaining 10,000	25
Total	29

There are none allowed for a fraction of 400, and the number authorized on 1st March, 1876, is not to be exceeded except under special circumstances.

(*n*) An ordinary incorporated village falls under the general rule laid down by sub-s. 1 of the section. Where the village is the county town, an arbitrary limit of five is fixed as the maximum.

(*o*) The meaning is, that in the towns of Niagara Falls and Port Arthur there may be three hotels beyond the ordinary maximum.

municipality memorialise the Lieutenant-Governor for an increase of the number of licensed taverns, the Lieutenant-Governor in Council may authorize a new census to be taken under the authority of a by-law of the municipality and at the expense of the municipality, and the limit for the number of licenses shall thereafter, upon each such new census, be one for each full two hundred and fifty of the population under one thousand, and one for each five hundred over one thousand of the population. (*p*)

Case of alteration or formation of municipality,

(2) In case of the alteration or formation of any municipality subsequent to such census of the Dominion of Canada, the population of such municipality, for the purposes of this Act, may be ascertained by the said license commissioners by reference to the enumeration on which such census took place, or by a new census taken under the provisions of this section. (*q*)

or municipal census.

(3) Where, since the said Dominion census, a census has been taken in any municipality under the authority of the council having jurisdiction, the limit may be the same as in the case of a census taken under this section for the purposes of this Act. (*r*) R. S. O. 1877, c. 181, s. 16.

Council may limit number of licenses.

20—(1) The council of every city, town, village or township may, by by-law to be passed before the 1st day of March in any year, limit the number of tavern licenses to be issued therein for the then ensuing license year, beginning on the 1st day of May, or for any future license year until such by-law is altered or repealed, provided such limit is within the limit imposed by this Act. (*s*)

(*p*) Population is made the basis for the calculation of the maximum number of licenses to be issued. The number of the population may be ascertained either by the result of the last general census, or by the result of a special census to be had under the circumstances stated. While the limit under such special census is as under sec. 18, one for each two hundred and fifty under one thousand, there is only one to be allowed for each five hundred over one thousand of the population. The latter provision differs from sec. 18 which allows one for each four hundred over one thousand.

(*q*) See the last note.

(*r*) See note *p supra*.

(*s*) Power is, under sub-s. 2 of sec. 4, conferred upon the license commissioners to pass by-laws for limiting the number of tavern and shop licenses respectively. Similar power as to tavern licenses only, is by this section, conferred on the council of every city, town,

(2) The council shall cause a certified copy of such by-law to be sent, immediately after the passing thereof, to the license commissioners of the district in which the municipality is situate. (*t*) R. S. O. 1877, c. 181, s. 17. Copy of by-law limiting to be sent to commissioners.

21. In any case where the license commissioners of any license district do not think fit, or are unable, to grant a new license to any applicant who has been licensed during the preceding twelve months, or any part thereof, they may, nevertheless, by resolution, provide for extending the duration of the existing license for any specified period of the year, not exceeding three months, at their discretion, upon payment, by the applicant, of a sum not exceeding the proportionate part of the duty payable for such license for the then next ensuing license year; and such license, when a certificate of the extension aforesaid has been endorsed thereon, under the hand of the inspector for the license district, shall remain valid for the period specified in the resolution of the license commissioners, and no longer; (*u*) Extended licenses.

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village, or township. A similar power as to shop licenses is conferred by sec. 32. The power, if exercised by a municipal council, must, under this section, be exercised before the first day of March. The limit, whether fixed by the license commissioners or by the municipal council, is subject to the maximum prescribed by sec. 18. When created by a by-law of the municipal council, it exists as to all future licenses, so long as the by-law is in force.

(*t*) This is for the guidance of the license commissioners in the issue of licenses in the particular municipality. A by-law limiting the number of tavern or shop licenses to one, would be bad, as creating a monopoly. See *In re Barclay and Darlington*, 12 U. C. Q. B. 86; *In re Greystock and Otonabee, Ib.*, 458; *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580; but not so where the limit is two or four. See *Terry* v. *Haldimand*, 15 U. C. Q. B. 380; *In re Gifford and Darlington*, 35 U. Q. B. 285; *Re Boylan and Toronto*, 15 O. R. 13.

(*u*) In order to obtain a license, which in itself continues only for a year, an expenditure of money is necessary in providing the necessary accommodation. When the license has been obtained, a further expenditure is necessary in providing liquors, &c., for the purpose of the business, most persons so licensed look forward to the renewal of the license, provided they continue of good conduct and repute. In order that such persons may not be surprised, or prejudiced by not obtaining a new license, provision is made for an extension of the license, not exceeding three months upon payment of a proportionate part of the duty. The object of the extension is to enable the persons indulged to make arrangements with as little loss as possible to go out of the business. The certificate of extension is endorsed on the old license.

but this provision shall not be construed to confer on the license commissioners any authority to exceed the limit prescribed by this Act as to the number of tavern licenses to be granted in any year, except in cities, where the license commissioners may, in their discretion, having regard to the particular circumstances of the city, and of each application, grant further tavern licenses, but within the number of such licenses granted for the year ending on the 30th day of April, 1877, (*v*) and except in a locality largely resorted to in summer by visitors, where the license commissioners may, if they think fit, grant one additional tavern license, but not to extend beyond six months, commencing on the 1st day of May in each year. (*w*) R. S. O. 1877, c. 181, s. 18.

Beer and wine licenses may be issued.

22. Upon application to any board of license commissioners, before the 1st day of May in any year, by any one or more persons within any municipality within the jurisdiction of such board for a beer and wine license, the board may by resolution declare that any one or more of the tavern licenses which may be lawfully issued, and which are to be issued for the license year beginning on the 1st day of May of such year, not exceeding the number so applied for, may be beer and wine licenses, and the board may thereafter cause beer and wine licenses to be issued in any such municipality, not exceeding the number mentioned in their aforesaid resolution, provided, nevertheless, that nothing in any such resolution contained, shall so limit the number of tavern or shop licenses, as to prohibit within any municipality the sale of spirituous liquors; and, provided, also, that nothing in such beer and wine licenses contained, or by reason of the granting thereof shall authorize the holder thereof, his servants or agents, to sell, barter or otherwise dispose of any kind of intoxicating liquors other than those mentioned in the said beer and wine license. 44 V. c. 27, s.19.

Liquors not to be sold by holder of beer and wine license.

Beer and wine licenses.

23. A beer and wine license shall be construed to mean a tavern license for selling, bartering, or trafficking by retail, in lager beer, ale, beer, and porter, and also in native wines, manufactured in Ontario, containing not more than fifteen per cent. of alcohol, and in light foreign wines containing not more than fifteen per cent. of alcohol, but not including port,

(*v*) See sec. 18.

(*w*) This is an extension of the principle already applied to the towns of Niagara Falls and Port Arthur. See sec. 18, sub-s. 2.

sherry or madeira wine, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same is sold. 44 V. c. 27, s. 20; 49 V. c. 39, s. 14.

Holder of beer and wine license subject to conditions of tavern license.

24. The holder of any such beer and wine license shall hold the same upon the terms and subject to all the conditions and penalties that apply to the holder of a tavern license; but, nevertheless, such holder of a beer and wine license shall not sell, barter or give, or keep in the house, or upon the premises for which such last mentioned license has been granted, any spirituous or intoxicating liquors for sale other than those thereby authorized; and as to such other liquors, the holder of such beer and wine license shall be deemed to be unlicensed, and section 132 of this Act shall apply. 44 V. c. 27, s. 21.

Holder of beer and wine license not to sell or keep spirits on premises licensed.

25—(1) If any holder of a beer and wine license, his servants or agents, shall sell or barter, give or keep in the house, or upon the premises, for which a license has been granted, intoxicating liquors other than those mentioned in his license, for sale, or, shall knowingly sell, or barter, give or keep in the house, or upon the premises for which a beer and wine license has been granted native wine containing a greater quantity of alcohol than fifteen per cent. thereof, or light foreign wines containing a greater quantity of alcohol than fifteen per cent. thereof, or port, sherry, or madeira wine, he shall be subject to the penalties provided by section 70 of this Act, and in addition thereto, upon a conviction for a second offence the board of license commissioners may, by resolution, revoke and cancel his beer and wine license, and in the event of failure on their part so to do, application may be made by any resident of the municipality to the Judge of the County Court, in the manner prescribed in section 92 of this Act, which shall apply to such application, for an order to revoke and cancel said license; and if it appears to such Judge that the holder of any such beer and wine license has been twice convicted of having sold or given intoxicating liquors other than those mentioned in the license, or of having kept the same upon or in the licensed premises, for sale, or of having knowingly sold or given native wine containing a greater percentage of alcohol than fifteen per cent. thereof, or light foreign wines containing a greater percentage than fifteen per cent. thereof or port, sherry or madeira wine, as hereinbefore mentioned, or of having knowingly kept the same upon or

in the licensed premises, then the said Judge shall make an order revoking and cancelling the said license, and it shall be revoked and cancelled from the date of such order, or from the passing of the aforesaid resolution by the commissioners. 44 V. c. 27, s. 22; 49 V. c. 39, s. 15.

(2) The percentage mentioned in the preceding sub-section, shall be determined by weight. 49 V. c. 39, s. 15.

Inspector may test liquors kept by licensee.

26. The inspector may from time to time take from the liquors kept by a person holding a beer and wine license upon the premises sufficient thereof to determine whether they are of a different kind from those mentioned in the license, or contain more alcohol than is by law allowed. 44 V. c. 27, s. 24.

Accommodation.

Accommodation required

27—(1) Every tavern or inn authorized to be licensed under the provisions of this Act shall contain, and during the continuance of the license shall continue to contain, in addition to what may be needed for the use of the family of the tavern or innkeeper, not less than four bed-rooms, and in cities six bed-rooms, together with, in every case, a suitable complement of bedding and furniture, and (except in cities and incorporated towns) there shall also be attached to the said tavern or inn, proper stabling for at least six horses; (*x*) but the foregoing requirements shall not apply to such taverns as come within sub-section 3 of section 4 of this Act. R. S. O. 1877, c. 181, s. 19 (1); 47 V. c. 34, s. 5.

Not to communicate with grocery.

(2) Such tavern or inn shall form no part of, and shall not communicate by any entrance with any shop or store wherein goods or merchandise known as groceries or provisions are kept for sale; (*y*) but this sub-section shall not apply to

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(*d*) The existence of the required accommodation is a condition precedent to the granting of the license. Its continued existence is also apparently a condition precedent to the continuance of the license.

(*y*) It is objectionable for a tavern or inn to form part of, or to be in direct communication with any shop or store, where groceries or provisions are kept for sale. It is equally objectionable for a room in which billiard tables are licensed for use, to communicate with a tavern or inn, and municipal councils in passing by-laws for the licensing of billiard tables, may provide against any such communication. See *In re Neeley and Owen Sound*, 37 U. C. Q. B. 289; *In*

taverns in townships, unless so provided by by-law of the township council. R. S. O. 1877, c. 181, s. 19 (2).

Every tavern to be an eating house.

28. In addition to the accommodation required by the last preceding section, each tavern or house of entertainment shall be shewn, to the satisfaction of the license commissioners, to be a well-appointed and sufficient eating-house, with the appliances requisite for daily serving meals to travellers; (*z*) and the requirements of this section shall apply to all taverns or houses of entertainment, without any exception whatever, and continuously for the whole period of the license. (*a*) R. S. O. 1877, c. 181, s. 20.

City or town council may prescribe further requirements as to tavern.

29. The council of any city or town may, by by-law to be passed before the 1st day of March in any year, prescribe for the then ensuing license year beginning on the 1st day of May, any requirements in addition to those in the last preceding two sections mentioned, as to accommodation to be possessed by taverns or houses of entertainment, as the council may see fit; (*b*) and the license commissioners upon receiving a copy of such by-law shall be bound to observe the provisions thereof; and such by-law shall continue in full force for such year and any future year until repealed. (*c*) R. S. O. 1877, c. 181, s. 21.

Security to be given.

Security to be given by tavern licensee.

30 Before any tavern license is granted the person applying for the same shall enter into a bond to Her Majesty in

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re Arkell and St. Thomas, 38 U. C. Q. B. 594. See further, *Jones* v. *Whittaker*, L. R. 5 Q. B. 541.

(*z*) A man who goes to an inn in the course of a journey whether of *business* or *pleasure*, is a traveller, and entitled to demand refreshments. *Atkinson* v. *Sellers*, 5 C. B. N. S. 442; *Taylor* v. *Humphreys*, 10 C. B. N. S. 429; *Fisher* v. *Howard*, 11 L. T. N. S. 373; *Taylor* v. *Humphreys*, 17 C. B. N. S. 539; *Peache* v. *Colman*, L. R. 1 C. P. 324; *Peplow* v. *Richardson*, L. R. 4 C. P. 168; *Davis* v. *Scrace*, *Ib.* 172; *Copley* v. *Burton*, L. R. 5 C. P. 489; *Watt* v. *Glenister*, 32 L. T. N. S. 856; *Coulbert* v. *Troke*, 1 Q. B. D. 1. See also *Reg.* v. *Daggett*, 1 O. R. 537; *Reg.* v. *Dublin*, (*Justices*) 8 L. R. Ir. 274.

(*a*) See note *x* to sec. 27.

(*b*) The Legislature has in the preceding two sections prescribed in general terms the accommodation necessary to be possessed by a person seeking a license for a tavern or house of entertainment. This section enables the council of a city or town to make additions to, but not to lessen the extent of the accommodation.

(*c*) See note *s* to sec. 20.

the sum of $200, with two good and sufficient sureties, (to be approved of by the inspector) in the sum of $100 each, conditioned for the payment of all fines and penalties such person may be condemned to pay for any offence against any Act, by-law or provision in the nature of law, relative to taverns or houses of public entertainment then and thereafter to be in force, and to do, perform and observe all the requirements thereof, and to conform to all by-laws and regulations that may be established by competent authority in such behalf, and such bond shall be in the words or to the effect of Schedule A to this Act; (*d*) and when executed shall be filed in the office of the inspector, to be by him transmitted to the office of the Provincial Secretary. (*e*) R. S. O. 1877, c. 181, s. 22.

SHOP LICENSES.

Shop licenses to whom given.

Security.

31. A shop license (*f*) shall not be granted to any person unless he has filed his application with the inspector on or before the 1st day of April in that year, and unless the inspector has reported to the license commissioners that he is a person of good character, and that his shop and premises are suitable for carrying on a reputable business, (*g*) and unless he executes with sureties a bond in the form expressed in Schedule B to this Act. R. S. O. 1877, c. 181, s. 23.

Number of shop licenses limited, and licenses may be subjected to certain restrictions.

32—(1) The council of every city, town, village or township may, by by-law to be passed before the 1st day of April in any year, limit the number of shop licenses to be granted therein for the then ensuing license year, beginning on the 1st day of May, and by such by-law or any other by-law passed before the 1st day of April, may require the shopkeeper to confine the business of his shop solely and exclusively to the keeping and selling of liquor, or may impose any restrictions upon the mode of carrying on such traffic as

(*d*) Long before the passing of this Act it was held that a township council had power before granting a license to require a certificate from the township treasurer of the deposit of a bond with the treasurer conditioned as in this section prescribed. *In re Greystock and Otonabee*, 12 U. C. Q. B. 458.

(*e*) The inspector whose duty it is to receive the bond and transmit it to the office of the Provincial Treasurer would thereby have notice of it.

(*f*) See sub-s. 3 of sec. 2 as to what is a shop license.

(*g*) As to the duties of the inspector see sec. 11 and notes thereto.

the council may think fit; (*n*) and such last-mentioned by-law may be made to come into force on the 1st day of May then next ensuing, or on the 1st day of May of the succeeding year, and any such by-law so passed shall not be repealed during the three years next after the year in which the same comes into force. R. S. O. 1877, c. 181, s. 24 (1); 47 V. c. 34, s. 6 (1).

Certified copy to be sent to license commissioners.

(2) It shall be the duty of the clerk, immediately after the passing of such by-law, to send a certified copy thereof to the license commissioners within whose license district the municipality is situate, and such by-law shall be binding upon the license commissioners, and any shop license to be issued shall conform to the provisions thereof; and such by-law shall remain in force for any future year until repealed, and any clerk who neglects, omits or refuses to send such certified copy shall incur a penalty of not less than $40 nor more than $100. (*o*) R. S. O. 1877, c. 181, s. 24 (2).

Limitation on issue of shop licenses.

33—(1) No shop license to sell liquors in any store, shop, place or premises where groceries or other merchandise are sold, or exposed for sale, other than mineral or aerated waters (not containing spirits), ginger ale, liquor cases, bottles, or liquor baskets, or packages, taps or faucets, or in any store, place or premises connected by any internal communication with such first-mentioned store, shop, place or premises, shall hereafter be granted to any person who was not a licensee or the holder of a shop license on the 25th day of March, 1884, or to his assigns.

License void if other goods sold.

(2) If any other commodity or goods are sold or exposed for sale, save as aforesaid, in any licensed shop in the pre-

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(*n*) The license commissioners have, under sec. 4, sub-s. 2, power to pass resolutions limiting the number of tavern and shop licenses. Sec. 20 enables the council of a city, town, village or township to limit the number of tavern licenses. This section contains similar power as to shop licenses. See also sec. 33. The council in passing a by-law under this section may impose such restrictions as it sees fit. A by-law limiting the number of shop licenses to be issued in a town to one, and requiring the licensee to confine his business exclusively to the keeping and selling of liquors, is bad as being in effect a prohibitory by-law and creating a monopoly. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 586.

(*o*) The simple neglect or omission of the clerk to comply with the directions of this section subjects him to the penalty. Ignorance, therefore, would not be any excuse.

ceding sub-section provided for, the license shall be void, and such licensed person may be convicted of selling liquor without license, upon proof that any other commodity or goods is or are exposed for sale or sold at such shop, save as aforesaid, and such conviction shall be conclusive evidence that such person is unlicensed. Nothing in this section shall limit the authority of municipal councils in respect of shop licenses under the next preceding two sections. All the provisions regarding the closing of licensed taverns and sales and evidences of sales therein during prohibited hours shall apply to shops licensed in any municipality after the by-law secondly provided for in the next preceding section shall have come into force, and to shops which are provided for in the next preceding sub-section.

Mineral waters not to be consumed upon licensed premises.

(3) The aforesaid mineral or aerated waters or ginger ale shall not be sold in less quantities than one-half dozen bottles, and shall not be allowed to be consumed upon the licensed premises under the same penalty as is provided for a breach of section 60 of this Act.

Conditions for obtaining shop license.

(4) From and after the 1st day of May, in the year 1888, no shop license shall be granted to any person to sell liquors in any store, shop, place, or premises where groceries or other merchandise are sold, or exposed for sale, except as aforesaid or in any store, place or premises, connected by any internal communication with such first-mentioned store, shop, place or premises. 47 V. c. 34, s. 6 (3-5, 7).

LICENSES BY WHOLESALE.

Issue of licenses by wholesale.

34. The inspector of the license district, in any municipality in which the license applied for is to have effect, shall issue to any applicant, upon a requisition therefor signed by him, and after payment to the inspector of the proper duty thereon, a license for selling fermented, spirituous or other liquors, by wholesale only, (*p*) in his warehouse, store, shop, or place to be defined in the said license, (*q*) and situate within the said municipality, and such license shall be deemed a license by wholesale within the meaning and subject to the provisions of sub-section 4 of section 2 of this Act. R. S. O. 1877, c. 181, s. 25.

(*p*) See sub-s. 4 of sec. 2 as to what is a wholesale license.

(*q*) See note *k* to sec. 17.

Regulations as to issue of wholesale licenses.

35. Wholesale licenses may be issued at any time during the year after the license commissioners of the district in which such license is to have effect, have directed the same to be granted, and shall be strictly limited to persons who carry on the business of selling by wholesale or in unbroken packages, (*r*) and any wholesale license so issued shall be and become void in case the holder thereof, at any time during the currency of the said license, directly or indirectly, or by or with any partner, clerk, agent or other person, carries on, upon the premises to which such license applies, the business of a retail dealer in any other goods, wares or merchandise. R. S. O. 1877, c. 181, s. 26.

Manufacturers of native wines.

36. Manufacturers of native wines, from grapes grown and produced in Ontario, and who sell such wines in quantities of not less than one gallon or two bottles of not less than three half-pints each at one time, shall be exempt from any duty under this Act, and shall not be required to obtain any license for so selling wines so manufactured. (*s*) R. S. O. 1877, c. 181, s. 27.

TRANSFER OF LICENSES.

Transfers of licenses.

37—(1) In case any person having lawfully obtained a license under this Act before the expiration of his license dies, or sells, or by operation of law or otherwise assigns his business, or removes from the house or place in respect of which the said license applies, his license shall, *ipso facto*, become forfeited, and be absolutely null and void to all intents and purposes whatsoever,—unless such person, his assigns or legal representatives, within one month after the death, assignment, or removal of the original holder of such license or other period, in the discretion of the license commissioners of the district in which the license has effect. obtains their written consent either to the continuance of the said business or to the transfer of such license to any other person, and thereupon forthwith transfers the same to such other person, who, under such transfer, may exercise the rights granted by such license, subject to all the duties

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(*r*) See note *c* to sub-s. 2 of sec. 2.

(*s*) This is for the encouragement of the home industry. The protection is a limited one. If the sale be in quantities less than one gallon or two bottles of not less than three half-pints each at one time, it will be illegal in the absence of a license.

and obligations of the original holder thereof, until the expiration thereof, in the house or place for which such license was issued and to which it applies, but in no other house or place. (*t*)

On transfer of tavern license new report necessary.

(2) In every such case of a transfer of a tavern license, the person in whose favour any such transfer is to be made shall first produce to the license commissioners a report of the inspector similar to that mentioned in section 11 of this Act. (*u*) R. S. O. 1877, c. 181, s. 28.

Provisional consent to a transfer of license.

(3) Upon receipt by the inspector of an application for a transfer of a license, and pending the consideration and consent thereto by the board of license commissioners, the inspector may within one month thereafter issue to the proposed transferee a written provisional consent in the form Schedule M to this Act annexed, under which the proposed transferee may exercise the rights granted by the license issued to the premises until the written consent of the board of license commissioners may be obtained: provided always that such written consent shall not operate or extend beyond one month from the time of the death of the original licensee or from the sale or transfer by the licensee or by operation of law; and provided further that such provisional consent shall not have any force or effect, unless the same be countersigned by one member of the board. 44 V. c. 27, s. 1.

Report of inspector may be dispensed with.

(4) Where an application is made for a transfer of a license issued to a tavern or shop situate in a remote part of

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(*t*) Upon the sale of a public house as a going concern, it is of the essence of the contract that the license of the house be transferred. *Day* v. *Luhke*, L. R. 5 Eq. 326; *Cowles* v. *Gale*, L. R. 7 Ch. 12. See further, *Claydon* v. *Green*, L. R. 3 C. P. 511. A. being the keeper of an hotel without a license, and B. being cognizant of that fact, upon the transfer of the premises to B. £150 were deposited in the hands of a stakeholder to be handed over to B. if A. failed to procure and transfer a license by the 31st October following. B. having failed to give the notice under the English Statute, and to attend the magistrates on the licensing day, was held not entitled to recover the £150. *Bryant* v. *Beattie*, 4 Bing. N. C. 254. A license cannot lawfully be transferred except in the cases mentioned in this section, and the consent of the commissioners in a case not within the section, does not make the transfer valid. *Reg.* v. *Booth*, 3 O. R. 144. The commissioners have full discretion to grant or refuse an application for the transfer of a license. See *Reg.* v. *Rowell*, L. R. 7 Q. B. 490.

(*u*) The transfer must of course be to a person of good character and repute, as to which, see note *t* to sec. 11.

the license district, or where for any other reason the license commissioners see fit, they may dispense with the report of the inspector, and act upon such information as may satisfy them in the premises. 47 V. c. 34, s. 7.

REMOVAL OF LICENSEE.

Inspector may consent to removal of tavern keeper to another house.

38—(1) Any inspector may, after resolution of the license commissioners allowing the same, endorse on any tavern or shop license permission to the holder thereof, or his assigns or legal representatives, to remove from the house to which his license applies to another house to be described in the endorsement to be made by the inspector on the license, and situate within the same municipality, and possessing all the accommodation required by law. (*a*)

Effect of such consent.

(2) Such permission, when the approval of the inspector is endorsed on the license, shall authorize the holder of the license to sell the same liquors in the house mentioned in the endorsement during the unexpired portion of the term for which the license was granted, in the same manner, and upon the same terms and conditions; but no such permission shall be granted unless and until the person applying therefor has filed with the license commissioners a report of the inspector containing the information required by law in case of application for a license, (*b*) and any bond or security which such holder of a license may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorised, (*c*) but such permission shall not entitle him to sell at any other than this one place. (*d*) R. S. O. 1877, c. 181, s. 29.

Bond to apply.

Mileage to be paid inspector in certain cases.

39. Where the inspector is required, in the case of an application for leave to transfer or remove a license, to make an inspection, under the next preceding two sections and to travel, in order to make such inspection, a distance

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(*a*) The license is for the sale of liquor in a particular place described. The removal of the transferee to another place without notice does not entitle the licensee to sell in the place to which he has removed. Permission therefore must be first obtained from the license commissioners to be signified by the endorsement by the inspector on the license.

(*b*) See sec. 11.

(*c*) See sec. 30.

(*d*) See note *a supra*.

of more than three miles from his office or residence, the person making such application for a transfer or removal, shall pay to the inspector, in addition to all other fees, the sum of ten cents per mile, one way, for his travelling expenses, and the same shall be deposited by the inspector to the credit of the license fund; but the inspector may be allowed the same, or so much thereof as is necessary to pay the actual cost of his travelling expenses in order to make such inspection, upon his accounts being rendered and approved in the ordinary manner; but this section shall not apply to city license districts. 44 V. c. 27, s. 18.

WHERE LICENSE LAPSES.

How licenses may be granted for premises where for any cause the license becomes void, etc.

40. In case for any cause the license becomes void, or in case the term or interest of the holder of a license in the premises licensed ceases before the expiry of the license, or if such licensee absconds or abandons the premises, or becomes insolvent, the license commissioners may grant a new license for the same premises, subject to the provisions of this Act, upon such terms as to the payment or refund by the new licensee of the duty for the unexpired period to the person entitled thereto under the original license, as to the license commissioners may seem just. R. S. O. 1877, c. 181, s. 30.

DUTIES PAYABLE.

Duties.

41—(1) The following license duties shall hereafter be payable and shall, subject to the provisions of the next following three sections, be in lieu of all others, (*e*) provincial or municipal, that is to say:

1. For each wholesale license		$150 00
2. For each tavern license in	cities	100 00
" "	towns	80 00
" "	other municipalities	60 00

(*e*) There was at one time an Imperial as well as a Provincial duty, but the former no longer exists. *Andrew* v. *White*, 18 U. C. Q. B. 170; and now the duty, whether Provincial or Municipal, is in the first instance paid to the Provincial Government. See *Reg.* v. *Board of Police of Niagara*, 4 U. C. Q. B. 141. For additional Provincial duties see sec. 44, and for duties for licenses issued under Canada Temperance Act. See sec. 150.

3. For each shop license in cities	100 00
" " towns	80 00
" " other municipalities	60 00

R. S. O. 1877, c. 181, s. 31 (1-3).

4. For each beer and wine license in cities	50 00
" " " towns	40 00
" " " other municipalities	30 00
5. For each license (other than a beer and wine license), for a vessel navigating any of the great lakes or the rivers St. Lawrence or Ottawa	100 00
For each beer and wine license for any such vessel	50 00
For each license (other than a beer or wine license), for a vessel navigating the inland waters of the Province other than as aforesaid	60 00
For each beer and wine license for any such last-mentioned vessel	30 00
6. For every transfer or removal of a license under sections 37 and 38 of this Act, $5, and the mileage of the Inspector, as provided by section 39 of this Act. (*f*) 44 V. c. 27, s. 2.	

(2) All moneys received for vessel licenses shall belong to Her Majesty, and be paid over to the Treasurer of the Province. R. S. O. 1877, c. 181. s. 36. Vessel licenses.

42—(1) The council of any municipality may, by by-law to be passed before the 1st day of March in any year, require a larger duty to be paid for tavern or shop licenses therein, but not in excess of $200 in the whole, (*g*) unless the by-law Council may impose a larger duty up to $200, but not more without consent of electors.

(*f*) The municipal council cannot make the sum payable for a license vary according to locality, as in certain villages, $100, and elsewhere, $75. See *In re Donelly and Clarke*, 38 U. C. Q. B. 599.

(*g*) If the by-law of the municipality require a larger duty than $200 in the whole, it must be submitted by the council to the municipal electors for their approval. See *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. The Court after long delay refused to quash a by-law which ought to have been submitted to the electors, but had not been. *In re Sheley and Windsor*, 23 U. C. Q. B. 569. See also *In re Richardson and Toronto*, 35 U. C. Q. B. 630. The quashing of a by-law under which a certificate has been granted and

Rev. Stat. c. 184.

has been approved by the electors in the manner provided by *The Municipal Act*, with respect to by-laws which, before their final passing, require the assent of the electors of the municipality. (*h*) R. S. O. 1877, c. 181, s. 32 (1).

(2) Such by-law shall take effect from the passing thereof, unless passed later than the 1st day of March in any year, in which case it shall come into force on the first day of May of the next succeeding year, and every such by-law shall remain in force until repealed. (*i*) R. S. O. 1877, c. 181, s. 32 (2); 49 V. c. 39, s. 3.

(3) Any by-law so approved shall not be varied or repealed unless the varying or repealing by-law has been in like manner submitted to and approved of by the electors of the municipality. (*j*) R. S. O. 1877, c. 181, s. 32 (3).

When duties now exceed the statutory figure they are not affected.

43. In any municipality where, by virtue of any by-law in that behalf, passed under the provisions of any former Act, a larger sum or duty in the whole than that mentioned in section 41 was, on the 10th day of February, 1876, payable for any shop or tavern license, such sum or duty shall be the lowest duty payable under this Act for any such license, until

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license issued, does *not* nullify the license. *Reg.* v. *Stafford*, 22 U. C. C. P. 177. When the plaintiff leased a tavern to the defendant for three years at a rent of $400 a year, payable quarterly, "the said lessor to allow the said lessee the amount he has to pay his license fees out of the first quarter's rent in each year," and the license fee when the lease was issued, and for some years previously, was $85, but in the following year it was raised to $200, it was held that the lessee could claim no allowance beyond the first quarter's rent, the lessor being bound to allow the fee only, provided it did not exceed such rent. *Writt* v. *Sharman*, 41 U. C. Q. B. 249. Additional duties are imposed in order to the raising of a revenue for provincial purposes by sec. 44, "unless the municipality shall by by-law otherwise provide."

(*h*) See notes to sec. 293 *et seq.* of the Municipal Act.

(*i*) It is not necessary that the by-law should be an annual one. It continues in force from its passing till its repeal. See *Re Croome and the City of Brantford*, 6 O. R. 188.

(*j*) The municipal council of a village incorporated and separated from a township in which, before and at the time of the incorporation, a by-law existed prohibiting the sale of intoxicating liquors in shops and places other than houses of public entertainment within the township it was held, could not by a by-law not submitted to the electors of the village for their approval, repeal the probitory by-law so far as it affected the village. *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.

altered by by-law of the municipality to be passed for the purpose, (*k*) but in no case shall the duty be under the amount in the said section specially prescribed. R. S. O. 1877, c. 181, s. 33.

Additional license duties.

44—(1) Over and above the duties for licenses hereinbefore imposed, (*l*) and any duties which have been or may be imposed by any municipal by-law, (*m*) unless the municipality shall, by by-law, otherwise provide, there shall be paid, in order to the raising of a revenue for provincial purposes, for the exclusive use of this Province, the following additional duties thereon, the whole of which shall form part of the Consolidated Revenue of the Province:

1. For each wholesale license	$100	00
2. For each tavern or shop license in cities of over 20,000 inhabitants	150	00
For each tavern or shop license in cities of less than 20,000 inhabitants	100	00
For each tavern or shop license in towns	70	00
" " in incorporated villages	60	00
" " in townships	30	00
For each tavern license in cities granted to premises exempted from the necessity having all the tavern accommodation provided by law	200	00
do. do. in towns	170	00
3. For each beer and wine license, a fee in addition to that provided by subsection 4 of section 41, of one-fourth that hereby added to tavern licenses		
4. For each vessel license, (*a*) great lakes	75	00
do. do. (*b*) do. beer and wine	25	00
do. do. (*c*) inland waters	40	00
do. do. (*d*) do. beer and wine	15	00

Population how determined.

(2) The population of a city for the purpose of this section shall be determined by the enumeration taken by the municipal assessors at the last preceding assessment.

License duties

(3) Nothing herein contained shall limit the right of the

(*k*) See note *g* to sec. 42.

(*l*) See sec. 41.

(*m*) See sec. 42.

imposed by municipalities.

council of any municipality, without submitting the same to the ratepayers, by their by-law to fix the duties or fees upon tavern or shop licenses, wholly for the use of the municipality, and the sum so fixed, or to be fixed, by any municipal council, may be, in addition to the sum imposed by this section, in and for the respective municipalities above mentioned. 49 V. c. 39, s. 1.

LICENSE FUND.

The duties, fines and penalties to form a license fund.

45—(1) All sums received from duties on tavern, shop and wholesale licenses, and for transfers and removals thereof, and received by the inspector for fines and penalties, shall form the license fund of the license district, for which the board of license commissioners has been appointed. (*n*) R. S. O. 1877, c. 181, s. 34 (1); 44 V. c. 27, s. 3; 48 V. c. 43, s. 8, *part*.

Application of the fund.

(2) So much of the license fund as is not specially appropriated otherwise, shall be applied, under regulations of the Lieutenant-Governor in Council, for the payment of the salary and expenses of the inspector, and for the expenses of the office of the board and of officers, and otherwise in carrying the provisions of the law into effect, and the residue, on the 30th day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council, shall be paid over,—one-third to the Treasurer of the Province, to and for the use of the Province, and the other two-thirds to the treasurer of the city, town, village, or township municipality in which the licensed premises are respectively situate; but in cases where any municipality by by-law requires a larger duty in the case of tavern or shop licenses to be paid than the specific sums mentioned in sections 41 and 44 for any license, the whole of such excess shall be paid over to the treasurer of such municipality. (*o*)

Cheques upon the license fund account.

(3) Cheques upon the license fund account shall be drawn by the inspector, and countersigned by the chairman of the board, or any two of the license commissioners, subject to the regulations of the Lieutenant-Governor in Council. R. S. O. 1877, c. 181, s. 34 (2, 3).

(*n*) See sec. 151 as to license fund of municipalities in which the second part of the Canada Temperance Act is in force.

(*o*) See sec. 42 and notes thereto.

46—(1) Any penalty in money recovered under this Act, in cases in which an inspector is the prosecutor or complainant, (*p*) shall be paid by the convicting Justice, Justices or Police Magistrate to the inspector, and paid in by him to the credit of the "License Fund Account." Application of penalties where inspector is prosecutor.

(2) In case the whole amount of the penalty and costs is not recovered, the amount recovered shall be applied, first, to the payment of the costs, and the balance shall be appropriated as hereinafter mentioned. Where the whole penalty and costs are not recovered.

(3) In any case where the inspector has prosecuted and obtained a conviction, and has been unable to recover the amount of costs, the same shall be made good out of the said license fund. Where costs are not recovered.

(4) In any case where the inspector has prosecuted and failed to obtain a conviction, he shall be indemnified against all costs out of the license fund, should the Justice, Justices, or Police Magistrate before whom the complaint is made certify that such officer had reasonable and probable cause for preferring such prosecution or complaint. R. S. O. 1877, c. 181, s. 35. Indemnity of inspector where he fails to obtain a conviction.

REGULATIONS AND PROHIBITIONS.

47. All licenses shall be constantly and conspicuously exposed in the warehouses, shops or in the bar-room of taverns, inns, alehouses, beerhouses, or other places of public entertainment, and in the bar-saloon, or in the bar cabin of vessels, under a penalty of $5 for every day's wilful or negligent omission so to do, to be recovered with costs from the merchant, shopkeeper or tavern, inn, alehouse or beerhouse-keeper or keeper of any other place of public entertainment, or master, captain, or owner of the vessel so making default. (*q*) R. S. O. 1877, c. 181, s. 37. Licenses to be kept exposed. Penalty.

(*p*) The Act in several parts provides for penalties for its contravention. Others than the inspector may be the prosecutor or complainant; this section provides only for the case of the inspector being prosecutor or complainant. The license fund is his indemnity. If he recover penalties, he is to pay them to the credit of the fund. If he fail to obtain a conviction, he is to be indemnified against costs out of the fund. So also where he has been unable to recover costs.

(*q*) The duty imposed is to have all licenses constantly and conspicuously exposed. The omission of that duty, whether wilful or not, subjects the party to a penalty of $5 for every day's omission. A conviction imposing a greater or other penalty would be bad.

Tavern keepers to exhibit notice of being licensed.

Penalty.

48. Every person who keeps a tavern, or other place of public entertainment, in respect of which a tavern license has duly issued and is in force, shall exhibit over the door of such tavern, inn, alehouse, beerhouse, or other place of public entertainment, in large letters, the words, "*Licensed to sell wine, beer, and other spirituous or fermented liquors*" (*r*) and in default thereof, shall be liable to a penalty of $5, besides costs. (*s*) R. S. O. 1877, c. 181, s. 38.

No person shall sell liquors without license.

49—(1) No person shall sell by wholesale or retail any spirituous, fermented, or other manufactured liquors without having first obtained a license under this Act authorizing him so to do; (*a*) but this section shall not apply to sales under legal process or for distress, or sales by assignees in insolvency.

(2) No person unless duly licensed shall by any sign or notice hold himself out to the public as so licensed; and the use of any sign or notice for this purpose is hereby prohibited. (*b*) R. S. O. 1877, c. 181, s. 39.

Persons not to keep spirituous, etc., liquors for sale unless licensed.

50. No person shall keep or have in any house, building, shop, eating-house, saloon, or house of public entertainment, or in any room or place whatsoever, any spirituous, fer-

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Reg. v. *Lennox*, 26 U. C. Q. B. 141; *In re Bright and Toronto*, 12 U. C. C. P. 433. See Sch. D, No. 1, for form of conviction.

(*r*) Proof that there is nothing exhibited over the door denoting that the house is licensed, has in England been held *prima facie* evidence in an action for penalties that the house is unlicensed. *Gregory* v. *Tuffs*, 6 C. & P. 271.

(*s*) See Sch. D, No. 2, for form of conviction.

(*a*) The sale of intoxicating drinks has, for many years, both in England and Canada, been placed, and wisely placed, under stringent and special legislation. *Per* Wilson, J., *In re Ross and York and Peel*, 14 U. C. C. P. 171, 174. This legislation either takes the form of prohibition or regulation. See *Barclay and Darlington*, 11 U. C. Q. B. 470. It is *ultra vires* for the Local Legislature to enact that the provisions of the Liquor License Act of Ontario, shall have full force and effect where a prohibitory by-law is in force so as to make an offence against the latter an offence against the former. *Reg.* v. *Prittie*, 42 U. C. Q. B. 612. See further, *Slavin* v. *Orillia*, 36 U. C. Q. B. 159; *Reg.* v. *Taylor*, 36 U. C. Q. B. 183. See Sch. D, No. 3, for form of conviction. See also sec. 96 and sec. 101, sub-s. 6.

(*b*) It has been held that a municipal council has the power to compel the removal of a notice such as is required by sec. 48 of this Act, from over the door of a house not for the time licensed. *In re Bright and Toronto*, 12 U. C. C. P. 433.

mented or other manufactured liquors for the purpose of selling bartering or trading therein, unless duly licensed thereto under the provisions of this Act; (*c*) nor shall the occupant of any such shop, eating-house, saloon, or house of public entertainment, unless duly licensed, permit any liquors, whether sold by him or not, to be consumed upon the premises, by any person other than members of his family or employees, or guests not being customers. R. S. O. 1877, c. 181, s. 40; 47 V. c. 34, s. 8.

Sections 49-50 not to apply to brewers, etc.

51—(1) Sections 49 and 50 shall not prevent any brewer, distiller, or other person duly licensed by the Government of Canada for the manufacture of fermented, spirituous, or other liquors from keeping, having, or selling any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate by any entrance with any shop or premises wherein any article authorized to be manufactured under such license is sold by retail, or wherein is kept any broken package of such articles.

(2) Every such brewer, distiller, or other person, shall also first obtain a license to sell by wholesale under this Act the liquor so manufactured by him, when sold for consumption within this Province, under which license the said liquor may be sold by sample, or in original packages, in any municipality, as well as in that in which it is manufactured; but no such sales shall be in quantities less than those prescribed in sub-section 4 of section 2 of this Act. (*d*) R. S. O. 1877, c. 181, s. 41.

(*c*) An agreement, the object of which is to enable an unlicensed person to sell spirituous, fermented, or manufactured liquors without a license, is illegal and cannot be enforced at law. See note *a* to sec. 126. As to the evidence sufficient to convict under this section, see notes to sec. 108. See Sch. D, No. 4, for form of conviction. See also sec. 101, sub-s. 6.

(*d*) In *Reg* v. *Taylor*, 36 U. C. Q. B. 183, the Court of Queen's Bench held that to entitle a brewer or distiller to sell liquor manufactured by himself, it was unnecessary to obtain a license from the Provincial Government; that decision was reversed by the Court of Appeal, but afterwards restored by the Supreme Court in *Reg.* v. *Severn*, 2 S. C. R. 70. Where defendant was convicted under this section for selling without a license and under section 61 for allowing liquor sold by him to be consumed on the premises, and one penalty was inflicted "for his said offence," the conviction was held bad in not showing for which offence the penalty was imposed. *Reg.* v.

Nor to chemists.

Rev. Stat. c. 151.

52—(1) The said sections numbered 49 and 50 of this Act shall not prevent any chemist or druggist duly registered as such under and by virtue of *The Pharmacy Act*, from keeping, having or selling liquors for strictly medicinal purposes, and then only in packages of not more than six ounces at any one time except under certificate from a registered medical practitioner ; but it shall be the duty of such chemist or druggist to record in a book, to be open to the inspection of the license commissioners or inspector, every sale or other disposal by him of liquor, and such record shall shew as to every such sale or disposal, the time when, the person, to whom, the quantity sold, and the certificate, if any, of what medical practitioner, (*e*) and in default of such sale or disposal being so placed on record, every such sale or disposal shall, *prima facie*, be held to be in contravention of the provisions contained in the said sections 49 and 50 of this Act (*f*) R. S. O. 1877, c. 181, s. 42 ; 44 V. c. 27, s. 4.

Medical practitioner or Justice of the Peace not to give a requisition for liquor colourably.

(2) Any medical practitioner or Justice of the Peace who colourably gives a certificate or requisition for medical purposes, without which liquor could not be lawfully obtained, or be lawfully obtained from a chemist or druggist in quantities of more than six ounces, to enable or for the purpose of enabling any person to obtain liquor to drink as a beverage, shall, for the first offence, be liable to a penalty of not less than $10 nor more than $20, and for a second or any subsequent offence, of not less than $20 nor more than $40. 47 V. c. 34, s. 12.

Exceptions.

(3) Nothing in this section shall restrict the sale of methylated alcohol, or oil of whiskey, or other medicines for cattle or horses. 50 V. c. 8, *Sched.*

CLUBS.

Clubs or societies incorporated under Rev. Stat. c. 172, not to sell liquors.

53—(1) Any society, association or club which has been or shall be formed or incorporated under *The Act respecting*

Young, 5 O. R. 184, a. See also, as to effect of a contravention of this section, sec. 101, sub-s. 6.

(*e*) A conviction of the defendant, who was a registered druggist, for selling spirituous and intoxicating liquors by retail without having a license so to do, as required by law, the said spirituous and intoxicateng liquor having been sold for other than strictly medicinal purposes only, was held to be valid. *Reg* v. *Denham*, 35 U. C. Q. B. 503.

(*f*) See Schedule D, No. 11, for form of conviction. See also as to breaches of this section, sec. 101, sub-s. 6.

Benevolent, Provident, and other Societies, and any unincorporated society, association or club which has been or may be formed or carried on specially or chiefly for the purpose of selling, bartering, or supplying, or of enabling any such society, association, or club to sell, barter or supply liquor to the members thereof, or to others, without a license, under this Act, and so as by means of such organization to evade the operations of this Act, and any member, officer or servant thereof, or person resorting thereto, who shall sell or barter liquor to any member thereof, or to any other person, without the license therefor by this Act required, shall be held to have violated section 49 of this Act and shall incur the penalties provided for the sale of liquor without license.

Keeping of liquor by clubs or societies a violation of sec. 50.

(2) The keeping or having in any house or building, or in any room or place occupied or controlled by such club, association or society, or any member or members thereof, or by any person resorting thereto, of any liquor for sale or barter, shall be a violation of section 50 of this Act.

Consumption of liquor, evidence of sale.

(3) Proof of consumption or intended consumption of liquor in such premises by any member of such club, association or society, or person who resorts thereto, shall be conclusive evidence of sale of such liquor, and the occupants of the premises or any member of the club, association or society, or person who resorts thereto, shall be taken conclusively to be the person who has or keeps therein such liquor for sale or barter ; and any liquor found upon such premises shall be liable to seizure in the manner provided by this Act. 47 V. c. 34, s. 9.

All places where intoxicating liquors sold to be closed from seven

54—(1) In all places where intoxicating liquors are, or may be, sold by wholesale or retail, no sale or other disposal (*g*) of the said liquors shall take place therein, or on the premises thereof, or out of or from the same, (*h*) to any per-

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(*g*) "Sale or other disposal" would include a gift. See *Overton* v. *Hunter*, 1 L. T. N. S. 366; *Petherick* v. *Sargent*, 6 L. T. N. S. 48. See further *Corbett* v. *Haigh*, 5 C. P. D. 50. This, however, does not prevent the licensee giving to "some member of his family or lodger in his house."

(*h*) A person licensed to sell beer by retail "to be drunk or consumed off the premises," who supplied a pint of beer to a traveller who sat upon a bench placed and *fastened* to the wall of the house, returning the mug in which he was served, was held to have been properly convicted of selling beer to be drunk *on the premises*. *Cross* v. *Watts*, 13 C. B. N. S. 239. A person licensed to sell beer *not* to

o'clock on Saturday night till six o'clock on Monday morning.

son or persons whomsoever, from or after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter, (*i*) and during any further time on the said days, and any hours or other days during which, by any statute in force in this Province, or by any by-law in force in the municipality wherein such place or places may be situated, the same, or the bar-room or bar-rooms thereof, ought to be kept closed, (*j*) save and except in cases where

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be drunk on the premises whose servant handed beer in a mug through an open window to a person who, after paying for it drank it immediately, standing on the highway as close as possible to the window, was held to have been improperly convicted of selling beer *on the premises*. *Deal* v. *Schofield*, L. R. 3 Q. B. S. See also, *Bath* v. *White*, 3 C. P. D. 175. The appellant being licensed to sell by retail intoxicating liquor to be consumed *off* the premises, was charged with keeping open his premises for the sale of such liquors during prohibited hours. He had two shops, a grocer's and a draper's, which formed part of his house, and both shops could be entered from the house at the back as well as by the customers' entrance. The grocery business was carried on in a shop which had an entrance for customers on one street, and the drapery business in a shop which had an entrance for customers on another street. During the day there were means of going, and customers occasionally passed from one shop to the other, but after ten o'clock shutters or partitions were put up and all means of communication, except through the house, prevented. It was held that the defendant could not be convicted of having the house open for the sale of liquor after ten o'clock at night. *Brigden* v. *Heighes*, 1 Q. B. D. 330. The defendant was licensed to sell "in and upon the premises known as the Palmer House." The Palmer House stood upon the front part of a deep lot owned by the defendant, the rear part of which had been for many years enclosed and used as a fair ground, immediately within which enclosure the defendant sold liquor, for which he was convicted: Held, that as the fair ground, though part of the lot on which the hotel stood, was not used in connection with or for the enjoyment of the hotel, it was not covered by the license, and the conviction was right. *Reg.* v. *Palmer*, 46 U. C. Q. B. 263. See also, *Tassell* v. *Ovenden*, 2 Q. B. D. 383. See sec. 110 as to evidence of guilt under this section.

(*i*) An information for selling intoxicating liquors on Sunday is so far a charge of a criminal character that the defendant cannot be compelled to give evidence against himself. *Reg.* v. *Roddy*, 41 U. C. Q. B. 291. See further *Reg.* v. *Fee*, 13 O. R. 590. Where in proceedings for selling liquor on Sunday it was not shewn that the defendant had a license or that the place in which the liquor was sold was one where intoxicating liquors were or might be sold by wholesale or retail, the conviction was held bad. *Reg.* v. *Rodwell*, 5 O. R. 186. Provincial Legislatures can prohibit or regulate the sale of liquor in saloons or taverns on Sundays, or at special times. *Poulin* v. *Quebec*, 9 S. C. R. 185. See Schedule D, Nos. 5 and 6, for form of conviction.

(*j*) "Or by any by-law in *force* in the municipality, &c." The

a requisition for medical purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; (*k*) nor shall any such liquor, whether sold or not, be permitted or allowed to be drunk in any such places during the time probibited by this Act for the sale of the same, except by the occupant or some member of his family, or lodger in his house. (*l*) R. S. O. 1877, c. 181, s. 43.

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only body, with some few exceptions, now authorized to pass resolutions for regulating taverns and shops to be licensed, are the license commissioners, and they act by resolution and not by by-law. See sec. 4. This power formerly was vested in municipal councils, see *In re Bright and the City of Toronto*, 12 U. C. C. P. 433, but was by sec. 1 of 39 Vict. cap. 26, Ont., transferred to the license commissioners, except where express provision is otherwise made in the Act. See *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580; *In re Arkell and St. Thomas*, *Ib.* 594. This section does not in express language confer the power either on the license commissioners or on municipal councils. Not having been in express language conferred on municipal councils the inference would be that it rests with the license commissioners under one general power to regulate. But whether a resolution passed by the license commissioners for the purposes of the section would be "a by-law in force in the municipality," within the meaning of the section, is a question. It was, under the old law, held that municipal councils may pass by-laws against the sale of liquor to a person in a state of intoxication, *In re Greystock and Otonabee*, 12 U. C. Q. B. 458, or to idiots and insane persons, *In re Ross* v. *York and Peel*, 14 U. C. C. P. 171, and it is now held that they may even since the appointment of license commissioners, prohibit the sale of intoxicating liquors to a child, servant or apprentice, without the consent of the parent, master or legal guardian. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580. A by-law providing that the bar-room shall be closed, and unoccupied except by members of the keeper's family or his employees, and shall have no light therein except the natural light of day, during the prohibited hours, is bad and in excess of the powers of the police commissioners. *Reg.* v. *Belmont*, 35 U. C. Q. B. 298.

(*k*) Formerly there was an exception in favour of travellers on Sunday. See *Baker* v. *Paris*, 10 U. C. Q. B. 621; *In re Barclay and Darlington*, 12 U. C. Q. B. 86; *In re Ross* v. *York and Peel*, 14 U. C. C. P. 171, but this no longer exists.

(*l*) It was at one time held that it was necessary for the conviction to negative the exceptions. See *Mills* v. *Brown*, 9 U. C. L. J. 246; *Reg.* v. *White*, 21 U. C. C. P. 354; but see *Reg.* v. *Breen*, 36 U. C. Q. B. 84. Punishment for offences against this section must be either imprisonment with hard labour or a fine. Formerly in the event of non-payment of the fine imprisonment without hard labour could alone be awarded. *Reg.* v. *Rodwell*, 5 O. R. 186. See now sec. 71. The holder of a license could alone be prosecuted under this section for selling liquor on prohibited days. *Reg.* v. *Duquette*, 9 P. R. 29. See now sec. 55.

Inspector to prosecute for second offence where sale on Saturday night and Sunday.

(2) Where a prior conviction or convictions have been had, it shall be the duty of the inspector when aware of the same, or when the same have been brought to his knowledge, to prosecute as for a second or subsequent offence, as the case may be, but an omission by the inspector to do this shall not invalidate any conviction that may have been obtained. This sub-section shall only apply to convictions for violations of that portion of the next preceding sub-section which prohibits the sale or other disposal of liquors in all places where intoxicating liquors are or may be sold, from and after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter; but where any prior conviction is for a violation of the said next preceding sub-section the onus of establishing that it was not for a violation during the said hours from Saturday night until Monday morning, shall lie upon the defendant. 47 V. c. 34, s 13.

(3) Any inspector who shall knowingly or wilfully violate the provisions of this section shall incur a penalty of not less than $10 and not more than $20. 49 V. c. 39, s. 17.

When keeper of house guilty of violation of provisions as to Sunday closing.

55—(1) The keeper of any licensed tavern in a city or town shall keep the bar room or room in which liquor is trafficked in, closed as against all persons, other than those permitted to enter the same under clauses (*a*) and (*b*) of this section, between the hours of seven o'clock on Saturday night and six o'clock on Monday morning thereafter; and any keeper of such licensed tavern who allows or suffers any person or persons to frequent or to be present in such bar-room or room in which liquor is trafficked in during the time aforesaid, shall be guilty of an offence under this Act, unless it be established to the satisfaction of the Police Magistrate or other Justice or Justices before whom the prosecution is heard,

(*a*) That the person so found frequenting, or present in the bar-room where liquor is trafficked in, as aforesaid, was at the time he or she so frequented or was present in such bar-room, a member of the family or household. (other than a lodger, boarder, or guest) or a servant, or employee of such keeper actually engaged in necessary domestic occupation or service within the said bar-room.

(*b*) Or that such person was present therein lawfully engaged in receiving or supplying liquor which might lawfully be sold during said prohibited hours.

(2) The word "keeper" when used in this section shall include the person actually contravening the provisions of this section, whether acting on behalf of himself or of another or others, and the actual offender as well as the "keeper" of the licensed tavern shall be personally liable to the penalties and punishments which may be imposed for the infraction or violation of this section, and at the prosecutor's option, the actual offender may be prosecuted jointly with or separately from the keeper, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. 49 V. c. 39, s. 11.

When persons other than keeper of house guilty.

56. Any person so found in such bar-room, or who has been present therein during the prohibited hours, in the preceding section mentioned, and who does not come within the exceptions and proviso in that section contained, shall be guilty of an offence under this Act, and upon conviction thereof shall be liable to a penalty for each offence of not more than $10 and not less than $2 with costs. 49 V. c. 39, s. 12.

No sales on polling days.

57. No sale or other disposal of liquor shall take place in any licensed premises within the limits of a polling subdivision, on any polling day for or at any Parliamentary election or election of a member for the Legislative Assembly, or any municipal election, or on any day in which a vote in accordance with the provisions of *The Canada Temperance Act*, is being taken, from or after the time of six o'clock in the morning of the said day, until the following lawful day at six o'clock in the morning. 47 V. c. 34, s. 10.

R.S.C. c. 106.

Obtaining liquor at prohibited time an offence.

58—(1) Every person, not being the occupant or a member of his family or lodger in his house, who buys or obtains, or attempts to buy or obtain intoxicating liquor during the time prohibited by this Act for the sale thereof, in any place where the same is or may be sold by wholesale or retail, shall be guilty of an offence under this Act. 48 V. c. 43, s. 1.

Power to exempt witness from penalty.

(2) Notwithstanding anything in this Act contained, any Police Magistrate or Justice of the Peace before whom any information or complaint is laid or made for the prosecution of any offence against the provisions of sub-section 1 of section 54 may, having regard to the demeanour of any witness and his mode of giving his evidence, by certificate in that behalf exempt such witness from the operation of sub-

section 1 of this section and from all proceedings and penalties thereunder in respect of the subject matter of such information or complaint. 48 V. c. 43, s. 4.

Provision where alleged violation of sub-s. 1 committed in detecting breach of law.

(3) If it shall be made to appear to the Police Magistrate or Justices before whom any complaint under this Act is heard, that the person charged with the violation of sub-section 1 of this section was so acting as an officer whose duty it was to enforce the liquor license laws, or under the instructions or authority in writing of any board of license commissioners, inspector or provincial officer, for the purpose of detecting a known or suspected offender against the liquor license laws, and of obtaining evidence upon which he might be brought to justice, the defendant shall not be convicted. 48 V. c. 43, s. 5.

Sale of liquors from ships in port prohibited.

59—(1) Where a license is issued under this Act, to authorize the sale of liquors upon any vessel navigating any river, lake, or water in this Province, no sale or other disposal of liquor (*m*) shall take place thereon or therefrom, (*n*) to be consumed by any person other than a passenger on the said vessel, whilst such vessel is at any port, pier, wharf, dock, mooring or station; nor shall any liquor, whether sold or not, be permitted or allowed to be consumed in or upon any vessel departing from and returning to the same port or wharf, dock, mooring or station, within the time hereinafter in this section mentioned, by any person during the hours prohibited by section 54, for sale of the same except for medical purposes as provided in the said section. (*o*)

Penalty.

(2) In case any such sale or other disposal of liquor takes place, the said license shall *ipso facto* be and become forfeited and absolutely void, and the captain or master in charge of such vessel, and the owner or person navigating the same, as well as the person actually selling or disposing of liquor contrary to this section, shall be severally and respectively liable to pay the Crown for the public uses of this Province the sum of $100; and any person who sells or disposes of any

(*m*) See note *g* to section 54.

(*n*) See note *h* to sec. 54.

(*o*) A passenger on a boat is looked upon in the same light as a lodger in a house, and so privileged to consume spirituous or fermented liquors when other persons are prohibited. The only exception is when the vessel is departing from or returning to port within the hours mentioned in section 54.

liquor contrary to the provisions of this section, shall also be liable to the same penalty and punishment therefor as are hereinafter prescribed in section 71 of this Act. (*p*) R. S. O. 1877, c. 181, s. 44.

Shop license not to authorize liquor sold to be consumed in the house.

60. No person having a shop license to sell by retail, and no chemist or druggist shall allow any liquors sold by him or in his possession, and for the sale of which a license is required to be consumed within his shop, or within the building of which such shop forms part, or which communicates by any entrance with such shop, either by the purchaser thereof or by any other person not usually resident within such building, under the penalty, in money, imposed by section 70 of this Act. (*q*) R. S. O. 1877, c. 181, s. 45.

Penalty.

Liquor not to be consumed on premises of persons having license by wholesale.

61. No person having a license to sell by wholesale, shall allow any liquors sold by him or in his possession for sale, and for the sale or disposal of which such license is required, to be consumed within his warehouse or shop, or within any building which forms part of or is appurtenant to, or which communicates by any entrance with any warehouse, shop or other premises wherein any article to be sold or disposed of under such license is sold by retail, or wherein there are kept any broken packages of such articles. (*r*) R. S. O. 1877, c. 181, s. 46.

Prohibition of sale to unlicensed persons.

62—(1) No person shall by himself or his partner, servant, clerk, agent, or otherwise, sell or deliver intoxicating liquors of any kind to any person not entitled to sell liquor, and who sells such liquor, or who buys for the purpose of re-selling, and any violation of the foregoing provision shall be an offence under this Act.

(2) But no person shall be convicted under this section who establishes to the satisfaction of the Police Magistrate or other Justice or Justices before whom the prosecution is

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(*p*) The penalties are cumulative : (1) Forfeiture of license ; (2) Penalty of $100 on the captain or master in charge of the vessel and the owner or person navigating the same as well as the person actually selling or disposing of the liquor contrary to the section ; (3) Penalties under sec. 71. See Sch. D. No. 12, for form of conviction. See as to breaches of this section, sec. 101, sub-s. 6.

(*q*) See note *h* to sec. 54. See Sch. D, No. 9, as to form of conviction.

(*r*) See note *h* to sec. 54. See also Sch. D, No. 10, for form of conviction.

heard that he had reason to believe and did believe that the person to whom the liquor was sold or delivered was duly licensed to sell such liquor, or did not sell liquor unlawfully, or did not buy to re-sell.

(3) This section applies only to a sale or delivery of liquor in any city, town or village by a person residing or carrying on business therein to a person who sells liquor unlawfully in the same city, town or village. 49 V. c. 39, s. 13.

One bar only.

63. Not more than one bar shall be kept in any house or premises licensed under this Act. 47 V. c. 34, s. 23.

Entrance to hotel to be saparate from bar.

64. No tavern license shall be granted in respect of any house in any city, town or incorporated village not already licensed, unless such house has a separate front entrance, in addition to the entrance to the bar or place where liquors are sold. 47 V. c. 34, s. 25.

Licensee not to purchase certain articles, or receive them in pledge.

65. If any person holding a license purchases from any person any wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods, furniture, or provisions either by way of sale or barter, directly or indirectly, the consideration for which, in whole or in part, is any intoxicating liquor or the price thereof, or receives from any person any goods in pawn, any Stipendiary or Police Magistrate, or any two Justices of the Peace, on sufficient proof on oath being made before him or them of the facts, may issue his or their warrant for the restitution of all such property, and for the payment of costs; and in default thereof the warrant shall contain directions for levying by sale of the offender's goods to the value of such property so pawned, sold, or bartered, and costs, and the offender shall also be liable to a penalty not exceeding $20. (*s*) 47 V. c. 34, s. 27.

Restitution may be ordered and enforced.

PENALTIES.

Not lawful to take money for certificate, etc.

66. It shall not be lawful for the license commissioners of any license district, or any of them, nor for any inspector, either directly or indirectly, to receive, take, or have any money whatsoever, for any certificate, license, report, matter or thing connected with or relating to any grant of any license, other than the sum to be paid therefor as the duty under the provisions of this Act, or to receive, take or have

(*s*) As to costs, see sec. 100.

any note, security or promise for the payment of any such money or any part thereof, from any person or persons whatsoever; and any person or persons guilty of, or concerned in, or party to any act, matter or thing contrary to the provisions of this section, or of sections 12 and 13, shall forfeit and pay to and for the use of Her Majesty a penalty of not less than $50, nor more than $100, besides costs, for every such offence. (*t*) R. S. O. 1877, c. 181, s. 47. Penalty.

67. Any member of a board of license commissioners or any inspector, officer or other person who, contrary to the provisions of this Act, knowingly issues, or causes or procures to be issued, a tavern or shop license, or a certificate therefor, shall, upon conviction thereof, for each offence, pay a fine of not less than $40, nor more than $100, and in default of payment of such fine, the offender or offenders may be imprisoned in the county gaol of the county in which the conviction takes place for a period not exceeding three months. (*u*) R. S. O. 1877, c. 181, s. 48. Penalty for issuing any license contrary to this Act.

68. If an officer of any municipal corporation is convicted of any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his office, and shall be disqualified from holding any office in any municipality in this Province for two years thereafter. (*v*) R. S. O. 1877, c. 181, s. 49. Forfeiture of office by municipal officer if convicted.

69. If a member of any municipal council is convicted of any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and vacate his seat, and shall be ineligible to be elected to or to sit or vote in any municipal council for two years thereafter; and if any such person, after the forfeiture afore- Forfeiture of office by member of council if convicted. Penalty.

(*t*) See note *a* to sec. 12.

(*u*) The offence under this section involves guilty knowledge. The words are, "Knowingly issues," &c. The issue through mistake or ignorance is not therefore an offence under the section. *Reg.* v. *Paton*, 35 U. C. Q. B. 442. A certiorari will not lie to remove a conviction under this section, which has been affirmed and amended on appeal to the sessions, the procedure being regulated by 32 & 33 V. c. 31, s. 71, D., as amended by 33 V. c. 27, s. 2, D., now R. S. C. c. 178, sec. 83. *Reg.* v. *Grainger*, 46 U. C. Q. B. 196.

(*v*) The penalties imposed by this section, are not in substitution for, but in addition to the ordinary penalties. The section is restricted in its operation to officers of a municipal corporation. As to members of municipal councils, see sec. 69.

said, sits or votes in any municipal council, he shall incur a penalty of $40 for every day he so sits or votes. (*w*) R. S. O. 1877, c. 181, s. 50.

Penalty for selling without license.

70. Any person (*x*) who sells or barters spirituous, fermented or manufactured liquors of any kind, or intoxicating liquors of any kind, without the license therefor by law required, (*y*) shall for the first offence, on conviction thereof, forfeit and pay a penalty of not less than $50 besides costs, and not more than $100 besides costs; (*z*) and in default of payment thereof he shall be imprisoned in the county gaol of the county in which the offence was committed, for a period of not less than three months, and to be kept at hard labour, in the discretion of the convicting magistrate; and for the second offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of four months, to

Punishments for second and third offences.

(*w*) The preceding section is restricted to officers of municipal corporations. This applies to members of municipal councils.

(*x*) "Any person" includes a married woman. *Reg.* v. *Williams*, 42 U. C. Q. B. 462; *Reg.* v. *Campbell*, 8 P. R. 55. A joint conviction of several persons for the same offence in a single penalty, is bad. *Reg.* v. *Sutton*, 42 U. C. Q. B. 220.

(*y*) A license irregularly issued when there is no fraud in the obtaining of it, is a protection against penal consequences. *Stevens* v. *Emson*, 1 Ex. D. 100. A license though obtained by fraud is valid unless the fraud is practised by the party to whom it is granted. *Reg.* v. *Marshall*, 1 N. & M. 277. The charge in the conviction should be certain and so stated as to be pleadable in the event of a second prosecution for the same offence. *Reg.* v. *Haggard*, 30 U. C. Q. B. 152, but it is not necessary to mention the statute or the person to whom the liquor was sold. *Reg.* v. *Faulkner*, 26 U. C. Q. B. 259; *Reg.* v. *Strachan*, 20 U. C. C. P. 182; but see *Reg.* v. *Cavanagh*, 27 U. C. C. P. 537. See also sec. 101, sub-s. 6. The proof of being licensed rests on the defendant. See sec. 114, sub-s. 1. The production of a license which on its face purports to be duly issued is *prima facie* evidence in favour of defendant. *Ib.*, sub-s. 2. See also *Rex.* v. *Dobson*, 7 East. 218.

(*z*) *For the first offence, &c.* This kind of legislation is by no means a novelty. The Legislature have, from a very early period endeavoured in certain offences to make the punishment of the hardened offender greater than the punishment of the offender for the first time, and attempted to lay down rules for the government of such cases. *Per* Harrison, C. J., in *Stoness* v. *Lake*, 40 U. C. Q. B. 320, 330. When the charge is for a second offence, it should, strictly speaking, be so stated in the information. *Reg.* v. *French*, 34 U. C. Q. B. 403; *Reg.* v. *Justices of Queen's*, 2 Pugs. N. B. 485; but defendant may, by his conduct, waive the necessity of such an allegation. *Stoness* v. *Lake*, 40 U. C. Q. B. 320.

be kept at hard labour in the discretion of the convicting magistrate; and for the third or subsequent offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of six months, to be kept at hard labour in the discretion of the convicting magistrate; (*a*) and in the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent. 49 V. c. 39, s. 4.

Penalty for contravention of sec. 54 (1).

71—(1) For punishment of offences against sub-section 1 of section 54 of this Act, the following penalties are imposed (1) for the first offence a penalty of not less than $20 and not more than $40 with costs, shall, in case of conviction, be recoverable from and leviable against the goods and chattels of the persons who are the proprietors in occupancy, or the tenants or agents in occupancy of the said place or places, who are found by themselves, or their servants or agents, to have contravened the sub-section 1 of section 54, or any part thereof, and in default of payment of such fine and costs the offenders may be imprisoned in the county gaol of the county in which the conviction is made, for a period not exceeding fifteen days with hard labour; (2) for the second offence, a penalty against every such offender of not less than $40 and not more than $80 with costs, or twenty days' imprisonment with hard labour; (3) for a third offence, a penalty against every such offender of not less than $80 and not more than $100 with costs, or fifty days' imprisonment with hard labour; and such conviction for a third offence shall, in addition to any other punishment by law provided, *ipso facto* operate as a forfeiture of the license held by the person so convicted, and disqualify him from obtaining a license for two years thereafter. (*b*) 47 V. c. 34, s. 11; 48 V. c. 43, s. 2.

Second offence.

Third offence.

(*a*) *Hard Labour, &c.* The Provincial Legislatures have, under sub-s. 15 of sec. 92 of the B. N. A. Act, power to impose punishment by fine, penalty, or *imprisonment*, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in that section. And "imprisonment" in that sub-section means imprisonment with or without hard labour. *Hodge* v. *Reg.*, 9 App. Cas. 117.

(*b*) A conviction for the second offence imposing upon the defendant a fine of $40, and in default of sufficient distress, imprisonment for ten days at hard labour, is bad. *Reg.* v. *Black*, 43 U. C. Q. B.

Penalty for contravention of s. 58 (1).

(2) Every person convicted of an offence against sub-section 1 of section 58 of this Act shall be liable to a penalty for each offence of not more than $10 and not less than $2 with costs. 48 V. c. 43, s. 3.

Penalty for refusing lodging, etc.

72. Every tavern keeper failing or refusing, either personally or through any one acting on his behalf, except for some valid reason, to supply lodging, meals, or accommodation to travellers, shall for each offence, be liable, on conviction to forfeit and pay any sum not exceeding $20. (*c*) 47 V. c. 34, s. 26.

Penalty for permitting drunkenness, etc.

73. If any person licensed under this Act permits drunkenness, or any violent, quarrelsome, riotous or disorderly conduct to take place on his premises, or sells or delivers intoxicating liquor to any drunken person, (*d*) or permits and suffers any drunken person to consume any intoxicating liquor on his premises, or permits and suffers persons of notoriously bad character to assemble or meet on his premises, or suffers any gambling or any unlawful game to be carried on on his premises, (*e*) he shall be liable to a penalty of not less than $10 and not exceeding $50. 47 V. c. 34, s. 28.

Penalty for internal communications with unlicensed premises.

74. Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainments or resort, or as a refreshment house,

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180. Convictions imposing the increased penalties for second and third offences under this section are bad unless proceedings have been taken for the first offence. *Reg.* v. *Rodwell*, 5 O. R. 186. See notes *z* and *a* to sec. 70. See Schedule D. Nos. 5 and 6 for form of conviction.

(*c*) An indictment lies against an innkeeper who refuses to receive a guest he having a room in his house at the time. The guest need not tender the price of his refreshment, if his rejection is not on the ground of his non-payment. It is no defence that the guest was travelling on Sunday, and at an hour after the innkeeper's family had gone to bed; nor is the guest bound to state his name and address, the innkeeper having no right to insist upon knowing these particulars. If the guest, however, comes in a state of drunkenness, or behaves in an indecent or improper manner, the innkeeper is not bound to receive him. *Reg.* v. *Ivens*, 7 C. & P. 213.

(*d*) A publican cannot recover for beer furnished to third persons by the order of a person who has previously become intoxicated in such publican's house. *Brandon* v. *Old*, 3 C. & P. 440.

(*e*) See note *l* to sec. 79.

shall be liable to a penalty of not less than $10 and not exceeding $50 for every day during which such communication remains open. (*f*) 47 V. c. 34, s. 29.

Penalty for allowing internal communication with premises in which other goods are sold.

75. Where the council of any city, town, village or township has by by-law required licensed shop-keepers to confine the business of their shops so licensed solely and exclusively to the keeping and selling of liquor, (*g*) any person who makes or uses or allows to be made or used, any internal communication between any such licensed premises and any shop or premises in which other goods are sold, shall be liable to a penalty upon conviction for the first offence of not less than $20 and not exceeding $50 for every day, or part of a day, upon which such communication remains open, and in default of payment thereof, shall be imprisoned in the county gaol of the county in which the offence was committed, for a period of not less than one month, to be kept at hard labour in the discretion of the convicting Justice, and for a second offence upon conviction thereof his license shall, *ipso facto*, become forfeited and void. 49 V. c. 39, s. 18.

Penalty for allowing liquors to be supplied to person apparently under age of 16.

76. Any licensed person who allows to be supplied in his licensed premises, by purchase or otherwise, any description whatever of liquor to any person apparently under the age of sixteen years, of either sex, not being resident on the premises or a *bona fide* guest or lodger, shall, as well as the person who actually gives or supplies the liquor, be liable to pay a penalty of not less than $10 and not exceeding $20 for every such offence. (*h*) 47 V. c. 34, s. 30.

Punishment for allowing liquor to be unlawfully consumed on premises.

77—(1) If any person having a license to sell liquors not to be drunk on the premises, (*i*) himself takes or carries, or employs or suffers any other person to take or carry, any liquor out of or from the premises of such licensed person for the purpose of being sold on his account or for his benefit or profit, and of being drunk or consumed in any other house, tent, shed or other building of any kind whatever, belonging to such licensed person, or hired, used or occupied by him, or on or in any place whether enclosed or not, and whether

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(*f*) As to costs, see sec. 100.

(*g*) See sec. 32.

(*h*) As to costs, see sec. 100. See also sec. 489, sub-s. 32 of the Municipal Act.

(*i*) See note *h* to sec. 54.

or not a public thoroughfare, such liquor shall be deemed to have been consumed by the purchaser thereof, on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly, in manner provided by this Act.

What proof of offence sufficient.

(2) In any proceeding under this section it shall not be necessary to prove that the premises, or place, or places to which such liquor is taken to be drunk belonged to or were hired, used or occupied by the seller, if proof be given to the satisfaction of the Court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license. 47 V. c. 34, s. 31.

Case of purchaser drinking liquor on premises where bought, etc.

78—(1) If any purchaser of any liquor from a person who is not licensed to sell the same to be drunk on the premises, drinks, or causes or permits any other person to drink such liquor on the premises where the same is sold, the seller of such liquor shall, if it appears that such drinking was with his privity or consent, be subject to the following penalties, that is to say :

First offence.

For the first offence he shall be liable to a penalty not exceeding $20 ;

Second or subsequent offence.

For a second and any subsequent offence he shall be liable to a penalty of not less than $10 and not exceeding $50 ; (*j*)

Interpretation.

For the purpose of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor, or under his control, or used by his permission.

Penalty on purchaser in certain cases.

(2) Any purchaser of liquors in a house or premises to which a shop or wholesale license applies, who drinks or causes any one to drink, or allows liquor to be drunk in the shop or premises where the same has been purchased, shall be liable to a penalty of not less than $10 and not exceeding $20. (*k*) 47 V. c. 34, s. 32.

Keepers of disorderly inn subject to certain penalties.

79. The mayor or Police Magistrate of a town or city, or the reeve of a township or village, with any one Justice of the Peace, or any two Justices of the Peace having jurisdiction in the township or village, upon information to them, or one

(*j*) As to costs see sec. 100.

(*k*) As to costs see sec. 100.

of them respectively, that any keeper of any inn, tavern, alehouse, beer-house or other house of public entertainment, situate within their jurisdiction, sanctions or allows gambling or riotous or disorderly conduct in his tavern or house, (*l*) may summon the keeper of such inn, tavern, ale or beer-house to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or without costs, or convict the keeper of having an improper or a riotous or a disorderly house, as the case may be (*m*) and annul his license, or suspend the same for not more than sixty days, with or without costs, as in his or their discretion may seem just; and in case the keeper of any such inn, tavern, ale-house, beer-house or place of public entertainment, is convicted under this section, and his license annulled, he shall not be eligible to obtain a license for the period of two years there-

(*l*) In *Cattell* v. *Ireson*, E. B. & E. 91, it was held that an information for using an engine for the purpose of taking game against Eng. Stat. 1 &2 Will. IV. c. 32, sec. 23, is a criminal proceeding, and consequently that the person charged is an incompetent witness. So when the information under the English Statute 9 Geo. IV. c. 61, charged the innkeeper with having "unlawfully and knowingly permitted and suffered persons of notoriously bad character to assemble and meet together in his house and premises." *Parker* v. *Green*, 2 B. & S. 299. The game of dominos is not necessarily an unlawful game. *Reg.* v. *Ashton*, 1 E. & B. 286; nor billiards, *Ovenden* v. *Raymond*, 34 L. T. N. S. 698; but playing at cards for money, even with the innkeeper's private friends in his own private room in the inn, or the playing of guests, with his knowledge is unlawful. *Patten* v. *Rhymer*, 3 E. & E. 1. See further, *Bosley* v. *Davies*, 1 Q. B. D. 84; *Hare* v. *Osborn*, 34 L. T. N. S. 294; *Cooper* v. *Osborne*, 35 L. T. N. S. 347; *Redgats* v. *Haynes*, 1 Q. B. D. 89; *Bew* v. *Harston*, 3 Q. B. D. 454. So playing at ten pins for a pint of beer on each game. *Danford* v. *Taylor*, 20 L. T. N. S. 483. Knowledge, or facts from which knowledge may be inferred, on the part of the innkeeper, is necessary. *Bosley* v. *Davies*, 1 Q. B. D. 84; *Redgate* v. *Haynes*, *Ib.* 89. To permit prostitutes to assemble for the purpose of prostitution, would appear to be disorderly conduct on the part of the innkeeper. *Belasco* v. *Hannant*, 3 B. & S. 13; *Wilson* v. *Stewart*, *Ib.* 913; *Reg.* v. *Rice*, L. R. 1 C. C. R. 21; see further as to thieves, *Marshall* v. *Fox*, L. R. 6 Q. B. 370. A municipal council has power to prevent gambling, profane swearing, blasphemous or grossly insulting language, or any indecency or disorderly conduct in a licensed inn under the authority of the Municipal Act, sec. 489, sub-ss. 34, 36, and the general police power of the council. *In re Brodie and Bowmanville*, 38 U. C. Q. B. 580.

(*m*) The charge that the innkeeper allowed "drunkenness and other disorderly conduct," is not too vague. *Wray* v. *Toke*, 12 Q. B. 492.

after and shall also be liable to the penalties by section 70 prescribed (*n*) R. S. O. 1877, c. 181, s. 53; 44 V. c. 27, s. 6.

Provisions as to harbouring constables on duty.

80. Any person licensed to sell wine, beer or spirituous liquors, or any keeper of the house, shop, room, or other place for the sale of liquors, who knowingly harbours or entertains any constable belonging to any police force, or suffers such person to abide or remain in his shop, room or other place during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance, or restoring order, or otherwise in the execution of his duty, (*o*) shall, for any of the offences aforesaid, be deprived of his license. (*p*) R. S. O. 1877, c. 181, s. 54.

Penalty in case any person compromises, compounds, or settles a case.

81. Any person who, having violated any of the provisions of this Act, compromises, compounds or settles, or offers or attempts to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint has been made with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, shall be guilty of an offence under this Act, (*q*) and on conviction thereof, (*r*) shall be imprisoned at hard labour in the common gaol of the county in which the offence was committed for the period of three months. R. S. O. 1877, c. 181, s. 55.

(*n*) The penalties are cumulative. If there be a conviction under this section on more than one occasion the license may be revoked by the County Judge, and the person licensed disqualified from obtaining a license for two years thereafter. See sec. 91. See Schedule D, No. 13, for form of conviction.

(*o*) Guilty knowledge is of the essence of this offence. It is an offence *knowingly* to harbour or entertain any constable. See *Mullins* v. *Collins*, L. R. 9 Q. B. 292. See Schedule D, No. 14, for form of conviction.

(*p*) Loss of the license is the only punishment for the contravention of this section.

(*q*) A compromise contrary to the terms of this section is illegal, and therefore cannot form the subject of a reference to arbitration. *In re Fraser and Escott*, 1 U. C. L. J. N. S. 324.

(*r*) A conviction to the effect that defendant did unlawfully attempt and offer to compound and settle with one R., a certain offence, with a view of stopping or having the said charge dismissed for want of prosecution, is bad. *Reg.* v. *Mabey*, 37 U. C. Q. B. 248. See Schedule D, No. 15, for form of conviction.

Penalty for being concerned in any such compromise, etc.

82. Every person who is concerned in, or is a party to, the compromise, composition, or settlement mentioned in the next preceding section, shall be guilty of an offence under this Act, (*s*) and on conviction thereof shall be imprisoned in the common gaol of the county in which the offence was committed for the period of three calendar months. (*t*) R. S. O. 1877, c. 181, s. 56.

Person violating law may be disqualified from holding license.

83. Any holder of a beer and wine license who has been convicted of selling liquor without the license therefor required by law, or contrary to the terms of his license, or of this Act, shall, in addition to any other penalty provided, if the Police Magistrate or other Justice or Justices before whom the prosecution was heard, certify that the offence was in his or their opinion, a wilful one, be disqualified from having or holding a liquor license for, and during the then next succeeding license year, and any license granted to or obtained by any such person during such period shall be void. 49 V. c. 39, s. 16.

Penalty for tampering with a witness.

84. Any person who, on any prosecution under this Act, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself, or to swear falsely, (*u*) shall be liable to a penalty of $50 for each offence. R. S. O. 1877, c. 181, s. 57.

Penalty for violations in cases not otherwise provided for.

85. Any person who violates any other provision of this Act, in respect of which violation no other punishment is prescribed, shall for the first offence, on conviction thereof, forfeit and pay a penalty of not less than $20 besides costs, and not more than $50 besides costs; and for the second offence, on conviction thereof, such person shall forfeit and pay a penalty of not less than $40, besides costs, and not more than $60, besides costs, and in default of payment thereof he shall be imprisoned in the county gaol of the

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(*s*) The preceding section applies to the party accused, this to all who are concerned or are parties to the compromise.

(*t*) See Schedule D, No. 16, for form of conviction.

(*u*) The offence mentioned is a criminal offence at common law. This has therefore been held *ultra vires*, on the part of the local legislature. See *Reg.* v. *Lawrence*, 43 U. C. Q. B. 164.

county in which the offence was committed, for a period not exceeding two months, and to be kept at hard labour, in the discretion of the convicting magistrate; and for the third or subsequent offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of three months, to be kept at hard labour in the discretion of the convicting magistrate. 49 V. c. 39, s. 5, *part.*

Imprisonment under different convictions.

86. In the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent. 49 V. c. 39, s. 5, *part.*

Penalties not to be remitted.

Penalties or punishments not to be remitted.

87. No Police Magistrate or Justice or Justices of the Peace, license commissioner or inspector, or municipal council or municipal officer, shall have any power or authority to remit, suspend or compromise any penalty or punishment inflicted under this Act. (*v*) R. S. O. 1877, c. 181, s. 58.

Recovery of Penalties by Distress.

Penalties and costs, how recoverable.

88. For the recovery of the penalties in money under this Act, and legal costs, upon and after conviction in cases not appealable, and in cases appealable where an appeal has not been perfected according to law, it shall be lawful for any Justice, Justices or Police Magistrate to issue a warrant of distress to any constable or peace officer, against the goods and chattels of the person or persons convicted; and in case no sufficient distress is found to satisfy the said conviction, then in cases not otherwise provided for by this Act, it shall be lawful for the said Justice, Justices or Police Magistrate to order that the person or persons so convicted be imprisoned in any common gaol, or gaol or lock-up house, within the county in which such conviction was made, for any period not exceeding thirty days, unless the penalty and all costs are sooner paid. (*w*) R. S. O. 1877, c. 181, s. 59.

(*v*) In the past, municipal councils and others have been too ready to remit penalties to those who are likely to be useful at elections. This section is designed to prevent the continuance of such a flagrant abuse of the law.

(*w*) There is no power to imprison in the first instance for non-payment of a pecuniary penalty. The remedy in the first instance

Application of Penalties.

(*See also Section 45.*)

Application of penalties.

89. The penalties in money under this Act, or any portion of them which may be recovered, shall be paid to the convicting Justice, Justices or Police Magistrate in the case, and shall by him, or them, in case the inspector or any officer appointed by the Lieutenant-Governor or by the license commissioners, is the prosecutor or complainant, be paid to the inspector as provided in section 46, and in case such inspector or officer is not the prosecutor or complainant, then the same shall be paid to the treasurer of the municipality wherein the offence was committed. (*x*) R. S. O. 1877, c. 181, s. 60.

Municipalities to set apart a third.

90. The council of every municipality shall set apart not less than one-third part of such fines or penalties received by the said municipality for a fund to secure the prosecutions for infractions of this Act, and of any by-laws passed in pursuance thereof. (*y*) R S. O. 1877, c. 181, s. 61.

REVOCATION OF LICENSES BY COUNTY JUDGE.

Power of County Judge where license improperly obtained or licensee convicted of offence against Act.

91. Upon the complaint of the inspector or the board of license commissioners or the county attorney, that a license has been issued contrary to any of the provisions of this Act or of any by-law in force in the said municipality, or that the license has been obtained by any fraud, or that the person licensed has been convicted on more than one occasion of any violation of the provisions of section 79 of this Act, or has been convicted on three several occasions of any violation of any of the provisions of this Act, whether the

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is a warrant of distress. In case no sufficient distress is found, imprisonment may follow not exceeding thirty days, unless the penalty and all costs are sooner paid. See *Reg.* v. *Young*, 7 O. R. 88.

(*x*) Convicting Justices should forthwith pay over moneys levied by them *colore officii*. It is not lawful for such Justices to keep and use the moneys so levied, and pay them over only when they see fit to abandon the use of them. The payment must be made either to the inspector of licenses or to the treasurer of the municipality—the former where the inspector or other officer appointed by the Lieutenant Governor or license commissioners is the prosecutor, the latter in all other cases.

(*y*) The duty is imperative. Moneys paid to the inspectors are by him paid to the license fund, which is used in aid of the carrying out of the Act. See sec. 45.

offences in respect of which such convictions were made were the same or different in their character, so long as such convictions were for offences committed on different days, the Judge of the County Court of the county in which any municipality is situate in any part of which the license granted is intended to take effect, shall summon the person to whom such license issued to appear, and shall proceed to hear and determine the matter of the said complaint in a summary manner, and may upon such hearing, or in default of appearance of the person summoned, determine and adjudge that such license upon any of the causes aforesaid, ought to be revoked, and thereupon shall order and adjudge that the same be revoked and cancelled accordingly, and thereupon the license shall be and become inoperative and of none effect, and the person to whom such license issued shall thereafter, during the full period of two years, be disqualified from obtaining any further or other license under this Act. (*z*) R. S. O. 1877, c. 181, s. 62; 47 V. c. 34, s 15.

Procedure under preceding section.

92. The complaint in the preceding section mentioned, may be by a short petition to the Judge entitled "In the County Court of the County of——" (*a*) and "In the matter of the license granted to (*naming the defendant*)," praying for the revocation of the said license, and upon hearing the evidence adduced, or upon default of appearance of the prosecutor or defendant, the Judge may dismiss the matter of the complaint or make such order as he deems just, with or without costs to be paid by the prosecutor or defendant, and the order on adjudication of the Judge shall be final and conclusive, and shall not be the subject of appeal or revision by any Court whatever. R. S. O. 1877, c. 181, s. 64.

PROSECUTIONS.

Any person may be prosecutor, etc.

93. Any person (*b*) may be prosecutor or complainant in prosecutions under this Act. R. S. O. 1877, c. 181, s. 66.

(*z*) The jurisdiction here conferred is statutory and limited to the particular cases for which provision is made. It would seem that offences committed in different years may be taken into consideration for the purposes of this section. The decision of the county Judge is final. See sec. 92.

(*a*) The proceedings being entitled in the County Court it would seem that subpœnas and other process may issue from that court to enforce, if necessary, the attendance of witnesses.

(*b*) "Any person," includes a married woman. See *Reg.* v. *Williams*, 42 U. C. Q. B. 462.

94. All informations or complaints for the prosecution of any offence against any of the provisions of this Act, shall be laid or made in writing (within thirty days after the commission of the offence, or after the cause of action arose, and not afterwards), (*c*) before any Justice of the Peace for the county or district in which the offence is alleged to have been committed, and may be made without any oath or affirmation to the truth thereof, and the same may be according to the form of Schedule C to this Act or to the like effect. R. S. O. 1877, c. 181, s. 65. Information. When to be laid. Form.

95. No license commissioner or inspector who is a Justice of the Peace, shall try or adjudicate upon any complaint for an infraction of any of the provisions of this Act committed within the limits of the license district for which he is a license commissioner or inspector; (*d*) but this section shall not be construed to apply to a Judge, or Junior Judge or Deputy Judge of a county. R. S O. 1877, c. 181, s. 67. License commissioners or inspectors who are justices prohibited from trying certain complaints.

96—(1) All prosecutions for the punishment of any offence against any of the provisions of sections 49, 50, 54, 59, 60, 66, 70, and 79 of this Act, or any section for the contravention of which a penalty or punishment is prescribed by section 70, whether the prosecution is for the recovery of a penalty or for punishment by imprisonment, may take place before any two or more of Her Majesty's Justices of the Certain prosecutions to be before two or more justices.

(*c*) Laying the information is the commencement of a prosecution before a magistrate. The magistrate, acting as a judge, and on behalf of the public in issuing the summons on an information laid before him, ought not to delay proceedings to the prejudice of the defendant. *Reg.* v. *Lennox*, 34 U. C. Q. B. 28. When the statute provided for the commencement of the prosecution within twenty days, an information sworn on 30th December, laying the offence on 16th December, was held to be sufficient. *Ib.* It is not necessary that the conviction should, on the face of it, show that the prosecution was commenced within the time limited. *Reg.* v. *Strachan*, 20 U. C. C. P. 182.

(*d*) It is necessary that the adjudications of justices should not only be free from bias, but if possible from all suspicion of bias. It is a cardinal principle in the administration of justice, subject to a few exceptions, that no man should adjudicate in a cause or matter wherein he is interested. See Paley on Convictions, 5th ed., p. 38, *et seq.* See also, *Reg.* v. *Chapman*, 1 O. R. 582; *Reg.* v. *Klemp*, 10 O. R. 143.

Peace having jurisdiction in the county or district in which the offence is committed. (*e*)

Evidence to be taken in writing.

(2) The Justices shall in all cases reduce to writing the evidence of the witnesses examined before them, and shall read the same over to such witnesses, who shall sign the same. (*f*) R. S. O. 1877, c. 181, s. 68.

All other prosecutions may be before one or more justices.

97. All prosecutions under this Act, other than those mentioned in the preceding section, whether for the recovery of a penalty or otherwise, may be brought and heard before any one or more of Her Majesty's Justices of the Peace in and for the county where the forfeiture took place, or the penalty was incurred, or the offence was committed or wrong done. (*g*) R. S. O. 1877, c. 181, s. 69.

Prosecutions under resolutions of license commissioners, imposing penalties.

98. In all cases where the board of license commissioners passes a resolution in pursuance of the powers conferred upon them by sections 4 and 5 of this Act, (*h*) and in and by any such resolution, penalties are imposed for the infraction thereof, such penalties may be recovered and enforced by summary proceedings before any Justice of the Peace having jurisdiction, in the manner and to the extent that by-laws of municipal councils may be enforced under the authority of *The Municipal Act*; (*i*) and the convictions in such proceedings may be in the form set forth in section 427 of the said last mentioned Act. R. S. O. 1877, c. 181, s. 70; 47 V. c. 34, s. 17.

Rev. Stat. c. 184.

One justice may hear case in rural municipalities.

99. When by this Act it is provided that any prosecution may take place before two or more of Her Majesty's Justices of the Peace, having jurisdiction in the county or district in

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(*e*) It would seem that the Crown is not obliged to prosecute under this section like a private individual before two magistrates, but may proceed by information in the High Court. See *Reg.* v. *Taylor*, 36 U. C. Q. B. 183. See, as to proceedings being taken before Justices in the absence of the Police Magistrate in places having a Police Magistrate. *Reg.* v. *Gordon*, 16 O. R. 64.

(*f*) It would be well for magistrates, when reducing the evidence of witnesses to writing, to use as nearly as possible the very language of the witnesses.

(*g*) See note *e* to sec. 96.

(*h*) See note *j* to sec. 54.

(*i*) See secs. 420 to 423 and sec. 479, sub-ss. 17-19, of the Municipal Act.

which the offence is charged to have been committed, then in case an offence is committed in a township, or in an incorporated or police village, or in an unorganized district, the prosecution may take place before, and a conviction or order may be made by, one or more such Justices of the Peace, instead of "two or more" of such Justices, whenever an appeal lies against such conviction or order to the County Judge. When such prosecution takes place before or a conviction or order is made by one Justice instead of two or more, the forms in the schedule to this Act may be altered and adapted so as to meet the exigencies of the case. 49 V. c. 39, s. 20.

Costs in convictions or orders under ss. 65 72—74, 76 and 78.

100. In all cases of conviction, or orders made under and in pursuance of sections 65, 72, 73, 74, 76 and 78 of this Act, the Justice or Justices making the same may, in his or their discretion, award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said Justice or Justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace. 48 V. c. 43, s. 7.

PROCEDURE IN CASES WHERE PREVIOUS CONVICTION CHARGED.

Proceedings in cases where a previous conviction charged.

101. The proceedings upon any information for committing an offence against any of the provisions of this Act, in case of a previous conviction or convictions being charged, (*k*) shall be as follows;

1. The Justices or Police Magistrate shall in the first instance inquire concerning such subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and if he answers that he was so previously convicted, he may be sentenced accordingly; (*l*) but if he denies that he was so previously convicted, or stands mute of malice, or does not answer directly to such question, the Justice or Police Magistrate shall then inquire concerning such previous conviction or convictions.

Number of previous

2. The number of such previous convictions shall be prove-

(*k*) "Being charged," &c. See note *z* to sec. 70.

(*l*) This is analogous to the procedure made necessary in the case of crime, under sec. 207 of the Criminal Procedure Act, R. S. C. c. 174.

convictions, how proved.

able by the production of a certificate under the hand of the convicting Justices or Police Magistrate, or of the Clerk of the Peace, without proof of his signature or official character, or by other satisfactory evidence. (*m*)

Previous convictions need not be charged.

3. A conviction may in any case be had as for a first offence notwithstanding that there may have been a prior conviction or convictions for the same, (*n*) or any other offence. (*o*)

Offences on same day.

4. Convictions for several offences may be made under this Act, although such offences may have been committed on the same day; but the increased penalty or punishment hereinbefore imposed shall only be recoverable in the case of offences committed on different days, and after information laid for a first offence. (*p*)

In case of a second or subsequent conviction becoming irregular by quashing of a first or previous conviction,

5. In the event of a conviction for any second or subsequent offence becoming void or defective, after the making thereof, by reason of any previous conviction being set aside, quashed, or otherwise rendered void, the Justices or Police Magistrate by whom such second or subsequent conviction was made, may by warrant under his or their hand summon the person convicted to appear at a time and place to be named in such warrant, and may thereupon, upon proof

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(*m*) There must be legal proof of the former conviction or convictions. *Cross* v. *Watts*, 13 C. B. N. S. 239; and it would seem that in addition there must be proof of the identity of the person convicted, with the person previously convicted. See *Reg.* v. *Crofts*, 9 C. & P. 219.

(*n*) The conviction may, *in any case*, be, in the discretion of the Justice or Justices, for a first offence, notwithstanding that there may have been a prior conviction or convictions for the same or any other offence. This would appear to be so, although prior convictions be alleged and proved. Unless the prior conviction or convictions be both alleged and proved, the Court is not bound in any case to take notice of them. See *Reg.* v. *Summers*, 11 Cox C. C. 248; *Reg.* v. *Willis*, 12 Cox C. C. 192.

(*o*) *Or any other offence.* The general rule when increased punishment is allowed for a subsequent offence is, that it and the former one shall be of the same character. See *Reg.* v. *Garland*, 11 Cox C. C. 224. But see note *z* to sec. 70.

(*p*) Although there may be several convictions for several offences committed on one and the same day, these are not to be used for the purpose of the increased penalty or punishment under the Act. Although the offences have been committed in different years, it would seem that they may be used for such a purpose. See note *z* to sec. 91.

of the due service of such warrant, if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed, and such amended conviction shall thereupon be held valid to all intents and purposes, as if it had been made in the first instance. (*q*)

Justices or Police Magistrate may amend; And amended conviction valid.

6. In case any person who has been convicted of a contravention of any provision of any of the sections of this Act, numbered 49, 50, 51, 52 or 59, or any section for the contravention of which a penalty or punishment is prescribed by section 70, is afterwards convicted of an offence against any provision of any of the said sections, such conviction shall be deemed a conviction for a second offence, within the meaning of section 70, and may be dealt with and punished accordingly although the two convictions may have been under different sections; and in case any such person is afterwards again convicted of a contravention of any provision of any of the said sections, whether similar or not to the previous offences, such conviction shall in like manner be deemed a conviction for a third offence, within the meaning of section 70, and may be dealt with and punished accordingly. (*r*) R. S. O. 1877, c. 181, s. 73.

Second offence; meaning of.

Third offence.

FORM OF INFORMATIONS AND OTHER PROCEEDINGS—AMENDMENTS.

102. In describing offences respecting the sale or other disposal of liquor, or the keeping, or the consumption of liquor in any information, summons, conviction, warrant, or proceeding under this Act, it shall be sufficient to state the sale, disposal, keeping, or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or any person to whom it was sold or disposed of, or by whom it was consumed; and it shall not be necessary to state the quantity of liquor so sold, disposed of, kept, or consumed, except in the case of offences where the quantity

Description in informations.

(*q*) This provision is necessary in case of prior convictions having been quashed or otherwise rendered void. The only prior convictions which are allowed to be taken into consideration for the purpose of the section, are those which, at the time of the subsequent conviction, are existing convictions. See *Reg.* v. *Ackroyd* 1 C. & K. 158; *Reg.* v. *Stonnel*, 1 Cox C. C. 142.

(*r*) See note *o* to sub-sec. 3 of this section.

is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. (*a*) R. S. O. 1877, c. 181, s. 74.

(*a*) A conviction, stating that "the defendant was in the habit of selling spirituous liquors without license," without charging any specific offence and not shewing time nor place, is bad. *Rex* v. *Ferguson*, 3 U. C. Q. B. O. S. 220; *Reg.* v. *Young*, 5 O. R. 184*a*. It is sufficient to state the offence as selling "a certain spirituous liquor called whiskey." *Reid* v. *McWhinnie*, 27 U. C. Q. B. 289. It is not sufficient to state that the person convicted "did keep his bar room open and allow parties to frequent and remain in the same contrary to law." *Reg.* v. *Hoggard*, 30 U. C. Q. B. 152. It is not sufficient to state that "he did sell wine, beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law," for such a conviction does not shew whether the offence was for selling without a license or during prohibited hours. *Ib.* It is not necessary in a conviction for selling liquor without license to mention any statute under which the conviction took place. *Reg.* v. *Strachan*, 20 U. C. C. P. 182. A conviction that one G. P. of, &c., innkeeper, after the hour of seven in the evening, in and at his tavern, &c., being a place where intoxicating liquors are allowed to be sold by retail, did unlawfully sell, &c., one glass of beer, &c., was held bad, as the use of the word innkeeper was not enough to shew the defendant the occupier, &c. *Reg.* v. *Pralee*, 23 U. C. C. P. 359. An information stated that the defendant, "a licensed hotel keeper in the town of Peterborough, did, on Sunday, 2nd July, 1876, at the hotel occupied by him in the said town, dispose of intoxicating liquor to a certain person who had not a certificate therefor," &c., and the conviction thereunder stated that the defendant was convicted "upon the information and complaint of J. R., the above named complainant, and another, before the undersigned," &c., "for that the defendant," &c., (using the words in the information): Held, that it sufficiently appeared that the hotel was a licensed hotel, at which liquor was allowed to be sold; that a sale "at" the hotel was equivalent to a sale "therein or on the premises thereof;" and that it sufficiently appeared the defendant was the proprietor in occupancy, or tenant or agent in occupancy. *Reg.* v. *Cavanagh*, 27 U. C. C. P. 537. After a first conviction has been returned to the Clerk of the Peace and filed, the Justices, if they think it defective, may make out and file a more formal conviction. *Wilson* v. *Gaybiel*, 5 U. C. Q. B. 227. See also *Reg.* v. *Smith*, 46 U. C. Q. B. 442; *Reg.* v. *McCarthy*, 11 O. R. 657. The Court refused to grant a mandamus to compel two Justices of the Peace to issue execution upon a conviction for selling spirituous liquors without a license, there being some doubt as to the sufficiency or legality of the conviction. *Reg.* v. *McConnell*, 6 U. C. Q. B. O. S. 629. The Court refused to quash a conviction affirmed on appeal, on the ground among others that the general verdict of guilty was inconsistent with the answers of the jury to specific questions. *Reg.* v. *Grainger*, 46 U. C. Q. B. 382. Where a conviction purporting to be made by three magistrates but signed by two only was returned with a certiorari it was held that if an objection at all it was a ground for sending back the writ that the third might sign but not a ground for quashing the conviction. *Reg.* v. *Young*, 7 O. R. 88.

Forms.

103. The forms given in the schedules to this Act, or any forms to the like effect, (*b*) shall be sufficient in the cases thereby respectively provided for, and where no forms are prescribed by the schedules new ones may be framed according to those appended to the Act of Canada entitled *An Act respecting Summary Proceedings before Justices of the Peace* or, *The Act respecting the Procedure on Appeals to the Judge of the County Court from Summary Convictions*, or any Acts amending the same respectively—such forms being made short and concise in the mode indicated in the schedules to this Act which shall serve as guides so far as the particular case will allow. R. S. O. 1877, c. 181, s. 75.

R.S.C. c. 178.

Rev. Stat. c. 74.

Amending information.

104. At any time before judgment, the Justice, Justices, or Police Magistrate may amend or alter any information, and may substitute for the offence charged therein any other offence against the provisions of this Act; but if it appears that the defendant has been prejudiced by such amendment (*c*) the said Justice, Justices or Police Magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. (*d*) 41 V. c. 14, s. 9.

(*b*) It is in general safer to follow the statutory form where applicable than to attempt to improve upon it by substituting a different one. In some cases, however, it is necessary to alter the form to bring the description of the offence within the language of the statute on which it is grounded, for it is a rule that where a statute gives a form of conviction not fully describing the offence, the conviction nevertheless must fully describe it. See *Nixon* v. *Nanney*, 1 Q. B. 747; see further, *Reg.* v. *Jones*, 12 A. & E. 684; *Reg.* v. *Recorder of King's Lynn*, 3 D. & L. 725. See also R. S. O. c. 1, s. 8, sub-s. 35.

(*c*) It is the duty of a person summoned before justices, if he have any objection to the form of the information, at once to state it, with a view, if necessary, to an amendment. See *Crawford* v. *Beattie*, 39 U. C. Q. B. 13, 29. Where a defendant appears and cross-examines witnesses on a charge over which the justice has jurisdiction, whether there be an information or not for the charge, and whether required to be in writing or not, he thereby waives the information. *Stoness* v. *Lake*, 40 U. C. Q. B. 320, 327. Where, instead of doing so, he insists upon the want of an information or defective information, and does nothing to waive it, he is, subject to the power of amendment, entitled to the benefit of the objection. *Ib.* There can be no reason why the information, like an indictment, may not at any time before judgment be amended, and this section in express language gives the power. See *Reg.* v. *Cavanagh*, 27 U. C. C. P. 537, 540.

(*d*) The only answer which can be made to a proposed amendment

Conviction not void for certain defects;

105—(1) No conviction or warrant enforcing the same or other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information or conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding that the same was made for an offence against some provision of this Act, within the jurisdiction of the Justice, Justices or Police Magistrate who made or signed the same, and provided there is evidence to prove such offence, (*e*) and no greater penalty or punishment is imposed than is authorized by this Act. R. S. O. 1877, c. 181, s. 77 (1); 44 V. c. 27, s. 7.

May be amended.

(2) Upon any application to quash such conviction, or warrant enforcing the same, or other process or proceeding whether in appeal or upon *habeas corpus*, or by way of *certiorari* or otherwise, the Court or Judge to which such appeal is made or to which such application has been made upon *habeas corpus* or by way of *certiorari* or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid, and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be), and such Court or Judge may, in any case, amend the same if necessary, (*f*)

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is the prejudice to the defendant, but this is at most a mere claim to the indulgence of the court in the granting of an adjournment where the justice is satisfied that it is reasonable under the circumstances.

(*e*) The old rule was to the effect that evidence would not be allowed to supply omissions in the statement of the charge, "for the office of evidence is to *prove* not to *supply* a legal charge." See *Rex* v. *Wheatman*, Doug. 345; *Wiles* v. *Cooper*, 3 A. & E. 524; *Carpenter* v. *Mason*, 12 A. & E. 629. This rule is here reversed.

(*f*) The powers of amendment are wide and ought, if possible, to be exercised, *Reg.* v. *Lake*, 7 P. R. 215, but there are cases in which the exercise of them is impossible. Thus, where there was a single joint conviction of two persons of having in their house of public entertainment unlawfully kept liquor for the purpose of sale, barter, and traffic therein without the license required, and adjudged for their offence to pay a fine of $40 and costs, an amendment was refused. *Reg.* v. *Sutton*, 42 U. C. Q. B. 220. Armour, J., in delivering the judgment of the Court, at p. 227, said: "I think the police magistrate, in making the conviction now before us, did precisely what he intended to do—convicted the defendants jointly,

and any conviction, warrant, process or proceeding so affirmed or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. R.S.O. 1877, c. 181, s. 77 (2).

EVIDENCE, ETC.

License, how proved.

106. In any prosecution or proceeding under this Act, in which proof is required respecting any license, a certificate under the hand of the inspector of the license district shall be *prima facie* proof of the existence of a license, and of the person to whom the same was granted or transferred; (*g*) and the production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated and of the authority of the inspector, without any proof of his appointment or signature. (*h*) R. S. O. 1877, c. 181, s. 78.

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and imposed the penalty upon them jointly, and I think he was clearly wrong in doing either. Can we now amend by drawing up separate informations, if that is, as I think it was, necessary? Can we amend by drawing up two separate convictions which I think clearly necessary? Can we divide the penalty and impose half upon each defendant, or can we impose the whole penalty upon each? Can we divide the costs and impose half on each, or can we impose the whole costs on each? if the latter, we would impose more costs than have been incurred; if the former, we would impose less than could have been incurred by separate convictions. Our powers of amendment are extremely wide, as pointed out in *Reg.* v. *Lake*, 7 P. R. 215, and we ought to amend if it is possible to do so, but I do not think they are wide enough to enable us to amend this conviction." Although a conviction was amended by Mr. Justice Wilson by striking out the words "hard labour," a similar amendment was refused in *Reg.* v. *Lawrence*, 43 U. C. Q. B. 164, and *Reg.* v. *Black*, *Ib.* 180. "It appears to me that the Legislature did not intend to impose upon a judge the duty, or to confer upon him the power to make any alteration in the sentencing part of a conviction." *Per* Osler, J., in *Reg.* v. *Allbright*, 9 P. R. 25.

(*g*) When one is proceeded against for doing an act which he is not permitted to do unless he has some special license in his favour, it is for him to prove the license. *In re Barrett*, 28 U. C. Q. B. 559.

(*h*) The mode of proof authorized by this section, is a certificate under the hand of the license inspector of the district. It is not only *prima facie* proof of the license but of the person to whom the same was granted, and of the facts therein stated, and of the authority of the license inspector, and all this without any proof of his appointment or signature. A certificate not complying with the statute, is the same as no certificate, and in such a case there must be proof of a license.

How each regulation authenticated, etc.

107. Any resolution of the board of license commissioners, passed under sections 4 and 5 of this Act, shall be sufficiently authenticated by being signed by the chairman of the board which passed the same; and a copy of any such resolution, written or printed, and certified to be a true copy by any member of such board, shall be deemed authentic, and be received in evidence in any Court of Justice without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original resolution has been forged. (*i*) R. S. O. 1877, c. 181, s. 79.

Places in which the sale of liquors is presumed.

108. Any house, shop, room, or other place in which are proved to exist a bar, counter, beer pumps, kegs, jars, decanters, tumblers, glasses, or any other appliances or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked in shall be deemed to be a place in which spirituous, fermented, or other manufactured liquors are kept or had for the purpose of being sold, bartered, or traded in, under section 50 of this Act, unless the contrary is proved by the defendant in any prosecution; (*j*) and the occupant of such

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(*i*) The section deals with two things, an original resolution and a copy. The former is sufficiently authenticated by being signed by the chairman of the board *which passed the same* not the chairman of the board *for the time being*. The latter when certified to be a true copy by any member of such board, is to be deemed authentic and received in evidence without proof of the signature. There is no declaration to the effect that a certified copy shall be received in evidence in the place of the original, although this was probably intended.

(*j*) Where crime is charged the well-known rule is, that the accused is presumed to be innocent until proved guilty; and that where guilt is sought to be inferred from circumstances, the circumstances must not only be consistent with guilt but inconsistent with innocence; and this has in England been applied to charges against persons for having violated some of the provisions of the Liquor License Acts. Thus where the evidence in support of an information against a beerhouse keeper for opening his shop on Sunday for the sale of beer was, that a little after midnight on Saturday the door of the house was closed and all appeared quiet; that a little after two on the Sunday morning, persons looking through the window saw a man drinking with the publican in the house, and that afterwards he let the man out. The defendant was held entitled to an acquittal, inasmuch as it did not appear but that the man had been let into the house on the Saturday. *Tennant* v. *Cumberland*, 1 E. & E. 401. But under this section the existence in a house of the usual appliances of a bar-room, is to be deemed evidence that spirituous, fermented, or other manufactured liquors are kept or had for the purpose of sale so as to throw upon the accused the obligation of proving the contrary. See also sec. 111.

house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter, or traffic therein. (*k*) R. S. O. 1877, c. 181, s. 80. Presumption as to occupant.

109. In proving the sale or disposal, gratuitous or otherwise, or consumption of liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to shew that any money actually passed, or any liquor was actually consumed, if the Justices, Police Magistrate, or Court hearing the case is or are satisfied that a transaction in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place ; (*l*) and proof of consumption or intended consumption of liquor on premises under license or in respect to which a license is required under this Act, by some person other than the occupier of said premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carrying away the same. as against the holder of the license or the occupant of the said premises. (*m*) R. S. O. 1877, c. 181, s. 81. Evidence as to sale, etc., of liquor.

110. In cities, towns, and incorporated villages in all cases where gas or other light is seen burning in the bar-room of such tavern or saloon where liquor is trafficked in, at any time during which the sale or other disposal of liquors is prohibited by any provision of this Act, (*n*) any such fact when Light in bar *prima facie* evidence of sale

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(*k*) The presumption mentioned in the preceding part of the section is a rebuttable one. The charge is to be inferred "unless the contrary is proved by the defendant." But the presumption in this part of the section, is made conclusive. The occupant is to be taken *conclusively* to be the person who has or keeps therein such liquors for sale, &c.

(*l*) There may be a sale although no money passed from the buyer to the purchaser, If the Justice is satisfied upon the evidence that a transaction in the nature of a sale actually took place, he may convict. So if satisfied that there was any disposal or that the consumption of liquor was about to take place.

(*m*) Proof of the consumption or intended consumption of liquor is made evidence, but not conclusive evidence that the liquor was sold to the person consuming or being about to consume it.

(*n*) A by-law providing that a bar-room should be closed and unoccupied except by members of the keepers family or his employees, and should have no light therein except the natural light of day, during the time prohibited by the by-law for the sale of liquor, was held to be illegal. *Reg* v. *Belmont*, 35 U. C. Q. B. 298. As to what constitutes evidence of sale during prohibited hours. See *Finch* v.

proved, shall be deemed and taken as *prima facie* evidence that a sale or other disposal of liquor by the keeper of such tavern or other place has taken place contrary to the provisions of sub-section 1 of section 54, (*o*) and such keeper may thereupon be convicted of an offence against said section, and shall, upon such conviction, be subject to the punishment prescribed by sections 85 and 86 of this Act. (*p*) 49 V. c. 39, s. 10.

What shall be deemed evidence of unlawful sale.

111. The fact of any person, not being a licensed person, keeping up any sign, writing, painting, or other mark, in or near to his house or premises, or having such house fitted up with a bar or other place containing bottles or casks displayed so as to induce a reasonable belief that such house or premises is or are licensed for the sale of any liquor, or that liquor is sold or served therein, or that there is on such premises more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person. 47 V. c. 34, s. 33.

Liability of occupants.

112—(1) The occupant (*q*) of any house, shop, room, or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act, or thing in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed in sections 70 and 71 of this Act, as the case may be, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant, (*r*) and proof of the fact of such sale, barter or traffic, or

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Blundell, 5 L. T. N. S. 672; *Smith* v. *Vaux*, 6 L. T. N. S. 46; *Tennant* v. *Cumberland*, 1 E. & B. 401.

(*o*) See notes *j* and *k* to sec. 108.

(*p*) See sec. 54 and notes thereto.

(*q*) When the husband, the occupant of the house in which the sale took place, was in gaol, it was held that his wife might be convicted of selling liquor without a license. *Reg.* v. *Williams*, 42 U. C. Q. B. 462. See also *Reg.* v. *Howard*, 45 U. C. Q. B. 346;

(*r*) The occupant of a shop is criminally liable for any unlawful act done therein in his absence, by clerk or assistant, as for example, the sale of liquor without a license by a female attendant. *Reg.* v. *King*, 20 U. C. C. P. 246; see further, *Reg.* v. *Campbell*, 8 P. R. 55; *Austin* v. *Davis*, 7 A. R. 478, overruling *Hugill* v. *Merrifield*, 12 U. C. C. P. 269.

other act, matter or thing, by any person in the employ of such occupant, or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, or other act, matter or thing, took place with the authority and by the direction of such occupant. (*s*) R. S. O. 1877, c. 181, s. 83.

Person selling as well as "occupant" to be liable.

(2) The person actually selling, or otherwise contravening any of the provisions of this Act, as in this section mentioned is for the purposes hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender, as well as the occupant, shall be personally liable to the penalties and punishments prescribed by sections 70 and 71 of this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with, or separately from, the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. 44 V. c. 27, s. 8.

In prosecutions for sale without license certain presumptions sufficient to put defendant on his defence, and convict him in default of rebuttal.

113. In any prosecution under this Act for the sale or other disposal of liquor without the license required by law, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal and certain knowledge, but the Justices or Police Magistrate trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly. (*t*) R. S. O. 1877, c. 181, s. 84.

Proof of being

114—(1) In any prosecution under this Act, whenever it

(*s*) It may be that the sale &c., took place in spite of and contrary to the occupant's command, and yet proof of the fact of the sale by any person in his employ or acting for him is, is under this section, made *conclusive* evidence that the sale was by his authority. See *Reg.* v. *Campbell*, 8 P. R. 55; *State* v. *Wentworth*, 65 Maine 234; *Brantigam* v. *White*, 73 Ill. 561; *Keedy* v. *Howe*, 72 Ill. 133; *Feantz* v. *Meadows*, *Ib.* 540; see further, note *j* to sec. 108. By sub-s. 2 of this section the actual offender may be prosecuted as well as the occupant but the conviction of one is a bar to the conviction of the other.

(*t*) See note *j* to sec. 108.

licensed to rest on the defendant.

appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed, and that he did the said act lawfully. (*u*)

Evidence of license.

(2) The production of a license which on its face purports to be duly issued, and which, were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *prima facie* evidence that the defendant is so entitled, and in all cases the signature to and upon any instrument purporting to be a valid license shall *prima facie* be taken to be genuine. (*v*) R. S. O. 1877, c. 181, s. 85.

Witnesses.

Witnesses summoned and not appearing, may be brought up by warrant.

115. In any prosecution under this Act the Justice, Justices, or Police Magistrate trying the case may summon any person represented to him or them as a material witness in relation thereto ; (*w*) and if such person refuses or neglects to attend pursuant to such summons, the Justice, Justices, or Police Magistrate may issue his or their warrant for the arrest of such person ; (*x*) and he shall thereupon be brought before the Justice, Justices, or Police Magistrate, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol of the county, there to remain until he consents to be sworn or to affirm and to answer. (*y*) R. S. O. 1877, c. 181, s. 86.

(*u*) As it rests on the defendant to prove that he was licensed, it is no objection to a conviction that it did not shew that the defendant was not licensed. *Reg.* v. *Young*, 7 O. R. 88.

(*v*) A certificate under the hand of the license inspector of the district is, under sec. 106 made sufficient *prima facie* proof of the existence of a license in any prosecution or proceeding.

(*w*) The informer is a competent witness, *Reg.* v. *Strachan*, 20 U. C. C. P. 182, but not the defendant, where the charge is preferred under sec. 54 of this Act. *Reg.* v. *Roddy*, 41 U. C. Q. B. 291.

(*x*) There is no power to issue the warrant in the first instance. The proposed witness must first be summoned. If, having been summoned, he refuses or neglects to attend pursuant to the summons, the Justice, &c. may issue his warrant, &c.

(*y*) The committal should be "until he consents to be sworn or to affirm or answer," and not in the ordinary form, "until discharged by the course of law." See *In re John Anderson*, 11 U. C. C. P. 1.

Production of books, etc., may be ordered.

116. Any person summoned as a party to, or as a witness in any proceeding under this Act, may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts, deeds, and other documents in his possession, custody, or control, relating to any matter connected with the said proceeding, saving all just exceptions to such production; (*j*) and shall be liable to the same penalties for non-production of such books, papers or documents, as he would incur by refusal or neglect to attend, pursuant to such summons, or to be sworn or to answer any question touching the case. (*k*) R. S. O. 1877, c. 181, s. 87.

Inspector's expenses to be allowed for attending court. 27,28 V.c.18; R.S.C. c. 106.

117—(1) In any prosecution under this Act, or *The Temperance Act of 1864*, or the second part of *The Canada Temperance Act*, if the inspector attends the Court as prosecutor or witness and travels to attend such Court a distance of more than three miles from his place of residence, it shall be lawful for the Justice or Justices trying the case to tax against the defendant, in cases of conviction, as costs in the cause to cover railway fare or hire of conveyance of the inspector in attending the said prosecution as follows:

Railway or stage fare

1. In case he travels by railway or stage the fares actually required to be paid by him;

Hired conveyance.

2. If by a hired conveyance, the sums actually required to be paid for a horse, conveyance, and tolls;

His own conveyance.

3. If in his own conveyance, ten cents per mile one way;

Other expenses.

4. And to cover all other expenses $1 per day;

Adjournments.

5. In case of adjournment at the instance of the defendant, similar additional allowances to be made, when the inspector is actually in attendance.

Expenses verified by oath

(2) The mileage or other expenses shall be verified by the oath of the inspector.

Inspector to make quarterly returns.

(3) The inspector shall make quarterly returns in detail under oath to the department of the Provincial Secretary,

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(*j*) The summons, in order to be effective, must of course on the face of it require the production of books, papers, accounts, deeds, and other documents in the possession, custody, or control of the witness.

(*k*) See sec. 115 and notes.

of all sums received by him for mileage, and other expenses, in this section provided for. 47 V. c. 34, s. 20.

APPEALS.

Conviction of justices final except as otherwise provided.

118—(1) In all cases of prosecution for any offence against any provisions of this Act for which any penalty or punishment is prescribed, a conviction or order of the said Justices or Police Magistrate, as the case may be, except as hereinafter mentioned, shall be final and conclusive, and except as hereinafter mentioned, against such conviction or order there shall be no appeal. (*l*)

Procedure on appeals.

(2) An appeal shall lie from a conviction to the Judge of the County Court of the county in which the conviction is made, sitting in chambers, without a jury, (*m*) provided a notice of such appeal is given to the prosecutor or complainant within five days after the date of the said conviction (*n*) subject to the following provisions.

Appellant to enter into a recognizance or deposit amount of penalty and costs.

(3) The person convicted, in case he is in custody, shall either remain in custody until the hearing of such appeal before the said Judge, or (where the penalty of imprisonment with or without hard labour is adjudged) shall enter into a recognizance with two sufficient sureties, in the sum of $200 each, before the convicting Justices or Police Magistrate, conditioned personally to appear before the said Judge, and to try such appeal and abide his judgment thereupon, and to pay such costs as he may order, and in case the appeal is against a conviction whereby only a penalty or sum of money is adjudged to be paid, the appellant may (although the order directs imprisonment in default of payment) instead of remaining in custody as aforesaid, give such recognizance as aforesaid, or may deposit, with the said Justices or Police Magistrate convicting, the amount of the penalty and costs, and a further sum of $25 to answer the respondent's cost of appeal. (*o*)

(*l*) This applies to convictions for selling spirituous or fermented liquors without a license. See *Reg.* v. *Firmin*, 33 U. C. Q. B. 523.

(*m*) When there is jurisdiction to entertain the appeal, mere irregularity in the mode of procedure, is not a ground for prohibition, for example the calling of a jury when the appeal should be heard without a jury. See *In re Brown and Wallace*, 6 P. R. 1.

(*n*) The giving of notice as directed is a condition precedent to the hearing of the appeal. See *Reg.* v. *Justices of Cheshire*, 11 A. & E. 139.

(*o*) See sec. 120.

(4) Upon such recognizance being given or deposit made, the said Justices or Police Magistrate shall liberate such person, if in custody, and shall forthwith deliver or transmit by registered letter post-paid, the depositions and papers in the case, with the recognizance or deposit, as the case may be, to the clerk of the County Court of the county wherein such conviction was had. (*p*) Justices to transmit depositions to clerk of County Court.

(5) The appellant shall pay to the clerk of the County Court, for his attendance and services in connection with such appeal, the sum of $1, and the same may be taxed as costs in the cause. Clerk's fees.

(6) The practice and procedure upon such appeal, and all the proceedings thereon, shall thenceforth be governed by *The Act respecting the Procedure on Appeals to the Judge of a County Court from Summary Convictions*, so far as the same is not inconsistent with this Act. (*q*) 47 V. c. 34, s. 18. Rev. Stat. c. 75, to apply.

119. An appeal by the inspector, or other prosecutor, shall lie to the Court of Appeal from the decision, judgment, or order of any Judge of a County Court upon an appeal from any conviction or order made in a case arising out of or under this Act in which a conviction or order has been quashed, or set aside, upon the ground, directly or indirectly, of the invalidity of any Act or Acts of the Legislature of this Province, or of any part thereof, or from the decision, judgment, or order of the Judge of a County Court in any other case arising out of or under this Act in which the Attorney-General of the Province shall certify that he is of opinion that the matters in dispute are of sufficient importance to justify an appeal; such appeal shall be had upon notice thereof to be given to the opposite party of the intention to appeal within eight days, or where the certificate of the Attorney-General is necessary (*r*) and is obtained, within fifteen days after such judgment, decision or order shall have been made, and, in the case of such appeal, the clerk of the County Court shall certify the judgment, conviction, orders Appeal to Court of Appeal.

(*p*) It is presumed that performance of the duties imposed by this part of the section, could, if necessary be enforced by mandamus.

(*q*) When the appellant relies upon an objection on the evidence not raised before the convicting Justices effect will not be given to it. See *Purkis* v. *Huxtable*, 1 E. & E. 780.

(*r*) See sec. 121.

and all other proceedings to the registrar of the Court of Appeal, Toronto, for use upon the appeal. The said Court shall thereupon hear and determine the said appeal, and shall make such order for carrying into effect the judgment of the Court as the Court shall think fit. 47 V. c. 34, s. 19.

Costs on appeal from conviction. 27-28 V. c. 18; R.S.C. c. 106.

120. On an appeal to the County Judge or General Sessions from a conviction or order under this Act or under *The Temperance Act of 1864*, or *The Canada Temperance Act*, when costs are directed to be paid by either party, no greater costs shall be taxable by or against either party as between party and party than the sum of $10, and the actual and necessary disbursements in procuring the attendance of witnesses and the fees to which the clerk of the peace shall be lawfully entitled; the fees chargeable by the clerk of the peace upon any appeal under this Act shall not exceed the sum of $2. 41 V. c. 14, s. 8; 44 V. c. 27, s. 12; 50 V. c. 33, s. 6.

Appeal allowed in certain cases.

121. An appeal to the Court of Appeal shall lie from any judgment or decision of the High Court or a Judge thereof, upon any application to quash a conviction made under this Act, or to discharge a prisoner who is held in custody under any such conviction, whether such conviction is quashed or the prisoner discharged, or the application is refused; but no such appeal shall lie from the judgment of a single Judge, or from the judgment of the Court, if the Court is unanimous, unless in either case the Attorney-General for Ontario shall certify that he is of opinion that the point in dispute is of sufficient importance to justify the case being appealed; upon such certificate being produced to the clerk of the Court, in which the judgment or decision proposed to be appealed from has been given, the said clerk shall certify, under the seal of the Court, the proceedings returned to or had before or in the said Court, unto the Court of Appeal, and the said Court shall thereupon hear and determine the said appeal, without any formal pleadings, and shall give such order for carrying into effect the judgment of the said Court as the circumstances of the case may require. 44 V. c. 27, s. 17.

CIVIL REMEDIES AGAINST TAVERN KEEPERS, ETC.

Liability of innkeepers or persons in their employ, etc.,

122. Where in any inn, tavern, or other house or place of public entertainment wherein refreshments are sold, or in any place wherein intoxicating liquor of any kind is sold,

whether legally or illegally, any person has drunk to excess of intoxicating liquor of any kind, therein furnished to him, and while in a state of intoxication from such drinking has come to his death by suicide, or drowning, or perishing from cold or other accident caused by such intoxication, (*s*) the keeper of such inn, tavern, or other house or place of public entertainment, or wherein refreshments are sold, or of such place wherein intoxicating liquor is sold, and also any other person or persons who for him or in his employ delivered to such person the liquor whereby such intoxication was caused, shall be jointly and severally liable to an action as for personal wrong, (if brought within three months thereafter, but not otherwise) (*t*) by the legal representatives of the deceased person; and such legal representatives may bring either a joint and several action against them or a separate action against either or any of them, and by such action or actions, may recover such sum not less than $100 nor more $1000, in the aggregate, of any such actions, as may therein be assessed by the Court or jury as damages. (*u*) R. S. O. 1877, c. 181, s. 88.

Who give liquor to persons who become intoxicated.

(*s*) Where deceased, being intoxicated, fell off a bench in the bar-room and was placed upon the floor in a small room adjoining, with nothing under his head, and while there died from apoplexy or congestion of the brain, brought on, as the plaintiff alleged, by placing him in an improper position when intoxicated, it was held that the death did not arise from "accident caused by the intoxication," within the meaning of sec. 40 of 27 & 28 Vict. c. 18, from which this section is taken. *Bobier* v. *Clay*, 27 U. C. Q. B. 438. Hagarty, J., in delivering judgment, said, at p. 443: "If the deceased, having previously been drinking to excess, took in this tavern a tumbler of brandy and drank it off at a draught, and thereby produced an immediate apoplectic seizure or asphyxia and fell back insensible, and died at once or in a few hours, could we hold that to be death from accident caused by intoxication? We think not." The learned Judge, in another part of the same judgment, at p. 442, said: "Had our statute declared that if any person shall die from excessive drinking, the person furnishing the liquor so drank shall be responsible in this action, the case would be wholly different." See further *Krach* v. *Heilman*, 53 Ind. 517; *Collier* v. *Early*, 54 Ind. 559.

(*t*) No additional time is apparently given to a legal representative to bring the action, owing to the death of the intestate, more than three months after the happening of the accident. See *Turner* v. *Brantford*, 13 U. C. C. P. 109. The statute begins to run from the occurrence of the accident, not from the death. *Miller* v. *North Fredericksburgh*, 25 U. C. Q. B. 31.

(*u*) Proof of pecuniary damage does not appear to be necessary for the maintenance of the action. It appears to be in the discretion of

RESTRICTION ON SALE TO INEBRIATES.

Persons who furnish the liquor liable for assault committed by a person thereby intoxicated.

123. If a person in a state of intoxication assaults any person, or injures any property, the person who furnished him with the liquor which occasioned his intoxication,—if such furnishing was in violation of this Act, or otherwise in violation of law,—shall be jointly and severally liable to the same action by the party injured as the person intoxicated may be liable to; (*v*) and such party injured, or his legal representatives, may bring either a joint and several action against the person intoxicated and the person or persons who furnished such liquor, or a separate action against either or any of them. (*w*) R. S. O. 1877, c. 181, s. 89.

Power of justices to forbid sale of liquor to habitual drunkards.

124—(1) When it shall be made to appear in open Court sitting in the county in which he resides, that any person, summoned before such Court, by excessive drinking of liquor misspends, wastes or lessens his estate, or greatly injures his health, or endangers or interrupts the peace and happiness of his family, the Police Magistrate or Justices holding such Court, shall by writing under the hand of such Police Magistrate, or under the hands of two of such Justices, forbid any licensed person to sell to him any liquor for the space of one year, and such Police Magistrate, Justices, or any other two

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the Court or jury to assess the damages as they see fit, looking to all the circumstances of the case, provided the amount assessed be not less than $100 or more than $1000. This question was raised but not decided in *Bobier* v. *Clay*, 27 U. C. Q. B. 438. It was afterwards decided as above laid down in *Henderson* v. *Campbell*, an unreported case in the Court of Queen's Bench, and in *Gleason* v. *Williams*, 27 U. C. C. P. 93, by the Court of Common Pleas, under a different but similar section of the Act.

(*v*) In *McCurdy* v. *Swift*, 17 U. C. C. P. 126, decided under sec. 41 of 27 & 28 Vict. ch. 18, from which this section is taken—Wilson, J., at p. 138, said: "The legislature must have considered, as many persons do, that the person who intoxicates, or suffers or encourages another to become intoxicated when it is the interest of such a person to make as large a sale of liquor as the other will or can be made to buy, is far more to blame than the unfortunate inebriate, and should therefore be answerable for the acts and conduct of the person who has been deprived of his senses and rendered a really dangerous being." In that case it was held, that the Act may be construed as giving the civil remedy, at any rate, against the innkeeper, notwithstanding a felony may have been committed, which has not been prosecuted for although it does not contain any express provision to that effect. *Ib.*

(*w*) There is no limitation as to the amount of damages, such as contained in the previous section. See note *u* to that section.

Justices, of the county in which the said person resides, may, at the same or any other time, in like manner, forbid the selling of any such liquor to the said person by any licensed person of any other city, town or district, to which he resorts or may be likely to resort for the same.

Effect of such prohibition.

(2) Whenever the sale of liquor to any such drunkard shall have been so prohibited, if any other person, with a knowledge of such prohibition, gives, sells, purchases, or procures for or on behalf of such prohibited person, or for his or her use, any liquor, such other person shall, upon conviction, incur for every such offence, a penalty of not less than $10 and not exceeding $20.

Penalty for violation of this section.

(3) Any person so prohibited or notified, his servants or agents, who shall violate this section, shall for a first offence be liable to a penalty not exceeding $20, and for a second, and any subsequent offence, shall be liable to a penalty of not less than $20 and not exceeding $50.

Application to set aside prohibition or notice.

(4) The person in respect of whom any such notice shall be given, may, at any time while the same is in force, apply to the Judge of the County Court, of the county in which he resides, after having given seven days' notice of his intention so to do to the Police Magistrate or Justices who signed the said prohibition, or notice, and the County Crown Attorney for the county in which such person resides, to set aside such prohibition or notice. The Judge may, upon hearing the said party and any witnesses, either *viva voce* or upon affidavit, set aside the said prohibition or notice, or dismiss the said application, as in his discretion may seem best; Provided, nevertheless, that before any such prohibition or notice shall be set aside by the Judge, it shall be made to appear that the wife or husband (if married and residing with such wife or husband), as the case may be, of the person applying, has knowledge of such application and consents thereto. 47 V. c. 34, s. 21.

Judge may set aside prohibition or notice, or dismiss application.

Husband, wife, etc., may notify sellers of liquor not to furnish it to any person addicted to drinking

125. The husband, wife, parent, child of twenty-one years or upwards, brother, sister, master, guardian, or employer, of any person who has the habit of drinking intoxicating liquor to excess—or the parent, brother, or sister, of the husband or wife of such person—or the guardian of any child or children of such person—may give notice in writing, signed by him or her, or may require the inspector to give notice to any person licensed to sell, or who sells or is reputed to sell, intoxicating

liquor of any kind, not to deliver intoxicating liquor to the person having such habit: (*x*) and if the person so notified, at any time within twelve months after such notice, either himself, or by his clerk, servant or agent, otherwise than in terms of a special requisition for medicinal purposes, signed by a licensed medical practioner, delivers, or in or from any building, booth or place occupied by him, and wherein or wherefrom any such liquor is sold, suffers to be delivered, any such liquor to the person having such habit, he shall incur upon conviction a penalty not exceeding $50, and the person requiring the notice to be given may, in an an action as for personal wrong (if brought within six months thereafter, but not otherwise), (*y*) recover from the person notified such sum not less than $20 nor more than $500, as may be assessed by the Court or jury as damages; (*z*) and any married woman may bring such action in her own name, without authorization by her husband; and all damages recovered by her shall in that case go to her separate use: and in case of the death of either party, the action and right of action given by this section shall survive to or against his legal representatives, but the defendant shall not be liable for both penalties for the same offence. 47 V. c. 34, s. 22.

Married woman may bring action for damages.

(*x*) When there was no evidence to shew that the wife had in fact signed the notice served, but merely that she signed a notice, a copy of which was served, it was held under sec. 42 of 27 & 28 Vict. cap. 18, from which this section is taken, that there could be no recovery. *Gleason* v. *Williams*, 27 U. C. C. P. 93. There must not only be proof of the notice but proof of the fact that the deceased, before and at the time of the giving of the notice, was a person "who was in the habit of drinking intoxicating liquor to excess." This is the foundation of the case. Where the plaintiff in terms of this section gave notice to the defendant, a licensed inn-keeper, forbidding him to supply liquor to her husband in consequence of which he forbade his bar-keeper furnishing liquor to the husband but the bar-keeper notwithstanding did serve him with liquor in the tavern kept by defendant it was held that the defendant was liable. *Austin* v. *Davis*, 7 A. R. 478. See also as to the form of notice required. *Northcotte* v. *Brunker*, 14 A. R. 364. See further *Cayionnette* v. *Girard*, M. L. R. 1 S. C. 117, 182.

(*y*) See note *t* to sec. 122.

(*z*) No proof of pecuniary damage is necessary to the maintenance of the action. See note *u* to sec. 122. See also *Sauvage* v. *Trouillet dit Lajeunesse*, M. L. R. 3 S. C. 276, where it was held that the sum which may be recovered is intended as an indemnity for loss incurred and where no loss is proved will be limited to the minimum.

PAYMENT FOR LIQUOR ILLEGALLY SOLD NOT RECOVERABLE.

Money paid for liquor sold contrary to this Act may not be recovered.

126. Any payment or compensation for liquor furnished in contravention of this Act, or otherwise in violation of law, whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, and against justice and good conscience—and the amount or value thereof may be recovered from the receiver by the party who made the same; (*a*) and all sales, transfers, conveyances, liens and securities of every kind, in whole or part, made, granted or given, for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law, shall be wholly null and void, save only as regards subsequent purchasers or assignees for value, without notice; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this Act, or otherwise in violation of law. (*b*) R. S. O. 1877, c. 181, s. 91.

Securities, etc., for payment to be void.

(*a*) The ordinary rule is, that where a contract which a party seeks to enforce is forbidden, either by the statute or common law, no Court will lend its assistance to give effect to it, but this section goes further and entitles the person who paid for liquor sold contrary to law, notwithstanding payment, to recover from the receiver the amount paid, as having been received "without any consideration and against justice, and good conscience." It has been held that an agreement entered into for the purpose of enabling a person to sell beer and spirits without a license cannot be enforced. *Ritchie* v. *Smith*, 6 C. B. 462. The vendor of spirituous liquors who sells them knowing that they are to be sold in violation of law, and at the same time enters into an arrangement for aiding the purchaser so to sell them, cannot recover the price from the purchaser. *Foster* v. *Thurston*, 11 Cush. (Mass.) 322; see also *White* v. *Buss*, 3 Cush. (Mass.) 448; *Spalding* v. *Preston*, 21 Vt. 9. But it would appear to be no defence that the vendor knew the goods were bought for an illegal purpose, provided it was not made a part of the contract that they were to be used for that purpose and provided the vendor has done nothing to aid the unlawful design beyond the sale. *Tracey* v. *Talmage*, 4 Kern. (N. Y.) 162; see further, *Kreiss* v. *Sligman*, 8 Barb. (N. Y.) 439; *Smith* v. *Godfrey*, 28 Fost. (N. H.) 379. It has been held that a brewer who supplies beer to a public house on the credit of a person not licensed, can recover from such person the price of the beer. *Brooker* v. *Wood*, 5 B & Al. 1052, overruling *Meux* v. *Humphries*, 1 M. & M. 132; *S. C.* 3 C. & P. 79; see however *Langton* v. *Hughes*, 1 M. & S. 593.

(*b*) It is by sec. 69, sub. 2 of Revised Statutes, Ont., cap. 51, declared that the Division Courts shall not have jurisdiction in actions for spirituous or malt liquors drunk in a tavern or ale-house. See also, Rev. Stat, c. 91, sec. 23.

OFFICERS TO ENFORCE THE LAW, THEIR DUTIES AND POWERS.

Lieutenant-Governor may appoint officers to enforce this Act.

127—(1) The Lieutenant-Governor may appoint one or more Provincial officers whose duty it shall be to enforce the provisions of this Act, and especially those for the prevention of traffic in liquor by unlicensed houses. (*c*) R. S. O. 1877, c. 181, s. 92.

Provincial inspector may be appointed

(2) One of such officers may be designated "Provincial Inspector," and it shall be his duty—

(*a*) To make a personal inspection of each license district;

(*b*) To see that the books of each inspector of licenses are properly kept, and that all entries are properly made; and to examine into his accounts and into his mode of inspection, and to ascertain that the duties of the office are faithfully and efficiently performed;

(*c*) To hold investigations into the conduct of inspectors of licenses and license commissioners when required so to do by the head of the Department;

(*c*) It is a conspiracy for two or more persons, whether Government officers or detectives, to act in concert in unlawful measures to enforce a Liquor Licence Act, for example, by artifice inducing a man to sell liquor contrary to the law. *Commonwealth ex rel. Shea* v. *Leeds*, 8 U. C. L. J. N. S. 216. Paxson, J., of Philadelphia, in delivering Judgment said: "For the relators it was urged they were engaged in a lawful object, to wit, the enforcement of the Sunday Liquor Law. If this was in truth their object it was certainly a lawful one and worthy of commendation. Assuming such to have been their purpose, did they resort to any unlawful means to accomplish it? If they did, and if they acted in concert in the pursuance of a common design, there was a conspiracy. *It was never intended that a man should violate the law in order to vindicate the law.* I am of opinion that these relators, in their anxiety to procure evidence against Mr. Barthoulott, went a step too far. He was not engaged in any violation of law when they entered his place. They urged and persuaded him to furnish the beer. In fact they resorted to artifice and deception for that purpose. If any crime was committed, they were present aiding and abetting. It was urged in extenuation of the conduct of the relators that their action was entirely in accordance with the practice of the detective service, not only of the police, but in other departments of the Government. This is not my understanding of the detective service. I have never known an instance of detectives deliberately procuring a man to commit a crime in order to lodge information against him. Such informers have been infamous from the time of Titus Oates."

(*d*) To report upon all such matters as expeditiously as may be to the Lieutenant-Governor for his information and decision;

(*e*) When the said provincial inspector shall inquire or cause an inquiry to be made into the conduct of any inspector of licenses, or into the manner in which the law is enforced by the inspector of licenses, or into the accounts of the inspector of licenses, it shall be lawful for him to require that the evidence shall be given under oath, which oath he is hereby empowered to administer. He shall also have power to summon witnesses, and to enforce their attendance and to compel the production of books and documents, in the same manner and to the same extent as the inspector of Division Courts. (*cc*) 49 V. c. 39, s. 6.

Appointment of officers by license commissioners.

128. The license commissioners, with the sanction of the Lieutenant-Governor in Council, may appoint one or more officers to enforce the provisions of this Act, and especially those for the prevention of traffic in liquor by unlicensed houses, and shall fix the security to be given by such officers for the efficient discharge of the duties of their office, (*d*) and every such officer shall, within the license district for which he is appointed, possess and discharge all the powers and duties of Provincial officers appointed under the next preceding section other than those of the Provincial Inspector. (*e*) R. S O. 1877, c. 181, s. 93.

Officers within this Act.

129. Every officer so appointed under this Act, (*f*) every policeman, or constable, or inspector, shall be deemed to be within the provisions of this Act; and when any information

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(*cc*) See R. S. O. c. 51, sec. 61 *et seq.*

(*d*) A municipal by-law, passed on 21st July, 1874, appointed an officer under 36 Vict. cap. 34, sec. 8, Ont., to enforce the provisions of the said Act and the Acts therein recited, and the by-laws of the corporation respecting shop and tavern licenses. This by-law was passed to fill a vacancy in the office caused by the resignation of the person appointed under a by-law passed in February previous. The 36 Vict. cap. 34, had been repealed, when the by-law was passed, by 37 Vict. cap. 32, which gave power to fill a vacancy in such office. Held, that the by-law was not invalid. *In re Slavin and Orillia*, 36 U. C. Q. B. 159.

(*e*) See note *c* to sec. 127.

(*f*) Whether by the Government, under sec. 127, or by the license commissioners under sec. 128.

Duties of officers and county attorneys on receiving information of infringement of this Act.

is given to any such officer, policeman, constable or inspector that there is cause to suspect that some person is violating any of the provisions of this Act, it shall be his duty to make diligent inquiry into the truth of such information, and enter complaint of such violation before the proper Court, without communicating the name of the person giving such information ; (*g*) and it shall be the duty of the Crown Attorney, within the county in which the offence is committed, to attend to the prosecution of all cases committed to him by an inspector or officer appointed under this Act by the Lieutenant-Governor. (*h*) R. S. O. 1877, c. 181, s. 94.

Right of search.

130—(1) Any officer, policeman, constable, or inspector, may, for the purpose of preventing or detecting the violation of any of the provisions of this Act which it is his duty to enforce, (*i*) at any time enter into any and every part of any inn, tavern, or other house or place of public entertainment, shop, warehouse or other place wherein refreshments or liquors are sold, or reputed to be sold, whether under license or not, and may make searches in every part thereof, and of the premises connected therewith, as he may think necessary for the purpose aforesaid. (*j*)

(*g*) It is not the duty of the officer to enter complaints simply upon information that there is cause to suspect some person of violating the provisions of the Act. Such information may be given in spite and be without actual foundation of any kind. Before making the charge it is the duty of the officer "to make diligent enquiry into the truth of such information." See Sch. D, No. 19, for form of conviction.

(*h*) The duty of the Crown Attorney to act is only in cases committed to him "by an inspector or officer appointed under this Act by the Lieutenant-Governor." It is not his duty to act when the officer who commits the case to him is only an officer appointed by the license commissioners, nor where the person committing the case to him is simply a policeman, constable, or amateur detective.

(*i*) The right of search is granted not only to policemen, constables, and inspectors of licenses, but "to any officer" which would apparently include as well officers appointed by the license commissioners under sec. 128, as officers appointed by the Lieutenant-Governor under sec. 127.

(*j*) The time to enter is "at any time," whether on Sunday or any other day, and at any hour of night or any day. The place upon which the entry may be made is, "any and every part of any inn or tavern or *other* house or place of public entertainment, shop, warehouse, or *other* place wherein refreshments or liquors are sold or *reputed* to be sold, whether under license or not." The right is, "to

(2) Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, or constable, or inspector demanding to enter in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such officer, policeman, constable, or inspector, or any such searches as aforesaid, shall be liable to the penalties and punishments prescribed by section 70 of this Act. (*l*) R. S. O. 1877, c. 181, s. 95. Penalty for refusing to admit officer.

131. Any Justice of the Peace, upon information by any such officer, policeman, constable, or inspector that there is reasonable ground for belief that any spirituous or fermented liquor is being kept for sale, or disposal contrary to the provisions of this Act in any unlicensed house or place within the jurisdiction of such Justice, may grant a warrant under his hand, by virtue whereof it shall be lawful for the person named in such warrant at any time or times within ten days from the date thereof to enter, and, if need be, by force, the place named in the warrant, and every part thereof, or of the premises connected therewith, and examine the same and search for liquor therein; (*m*) and for this purpose may, with such assistance as he deems expedient, break open any door, lock, or fastening of such premises, or any part thereof, or of any closet, cupboard, box or other article likely to contain any such liquor; (*n*) and in the event of any liquor being so found unlawfully kept on the said premises, the occupant thereof shall, until the contrary is proved, be deemed to have kept such liquor for the purpose of sale, contrary to the pro- Search warrant may be granted. Unlawful keeping of liquor to be evidence of illegal dealings therein.

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make searches in every part thereof, and of the premises connected therewith, as *he* may think necessary for the purpose aforesaid." All this may be done without any warrant or other authority than the holding of the office indicated, but there is no power to enter by force as is conferred by sec. 131. See notes *m* and *n infra*; *Reg.* v. *Tott*, 4 L. T. N. S. 306.

(*l*) See sec. 70 and notes thereto. See sch. D. No. 18, for form of conviction.

(*m*) The special warrant here authorized is for entry, "at any time or times within ten days from the date thereof." This would exclude the day of the date. A person having this special warrant may, if need be, enter by force. This is a power not conferred under the preceding section.

(*n*) The nature of the force authorized is here indicated, as the breaking open any door, lock, or fastening, or any closet, cupboard, box, or other article likely to contain liquor.

visions of section 50 of this Act. (*o*) R. S. O. 1877, c. 181, s. 96; 49 V. c. 39, s. 7.

Seizure of liquor found on unlicensed premises.

132. When any inspector, policeman, constable, or officer in making or attempting to make any search under or in pursuance of the authority conferred by the preceding two sections of this Act or under the warrant mentioned in the last preceding section, finds in an unlicensed house or place any spirituous or fermented liquor which, in his opinion, is unlawfully kept for sale or disposal contrary to this Act, he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place, or of any other person, for keeping spirituous or fermented liquor for sale in such house or place without license, the Justices making such conviction may, in and by the said conviction, or by a separate or subsequent order, declare the said liquor and vessels, or any part thereof, to be forfeited to Her Majesty, and may order and direct that the said inspector, policeman, constable, or officer shall destroy the same or any part thereof, and the inspector or other person as aforesaid shall thereupon forthwith destroy the same, or part thereof, as directed by such conviction or order. 44 V. c. 27, s. 9.

If no conviction liquor shall be returned.

133. If the occupant or other person as aforesaid be not convicted of keeping the said liquor, or any part thereof, for sale as aforesaid, the inspector, or other person so seizing the liquor as aforesaid, shall return the same to the place where such seizure was made; the inspector, or other person acting with him, or by or under his directions, and the policeman, constable, or other officer acting under this Act shall be a public officer within the meaning of *The Act to protect Justices of the Peace and others from vexatious actions*, for the purposes of this Act. 44 V. c. 27, s. 10.

Rev. Stat. c. 73.

Duty of constables and others to prosecute offenders.

134—(1) It shall be the duty of every officer, policeman, constable or inspector in each municipality to see that the several provisions of this Act are duly observed, and to proceed by information and otherwise prosecute for the punishment of any offence against the provisions of this Act; and in case of wilful neglect or default in so doing in any case, such officer, policeman, constable or inspector shall

(*o*) See note *j* to sec. 108.

incur a penalty of $10 for each and every such neglect and default. (*p*) R. S. O. 1877, c. 181, s. 97. Penalty for neglect.

(2) It shall be the duty of the board of commissioners of police, and of the chief of police, to enforce the provisions of this section, and any officer or policeman convicted of violating the provisions thereof may be summarily dismissed. 44 V. c. 27, s. 25. Commissioners of police and chief of police to enforce this section.

UNORGANIZED DISTRICTS.

135. Subject to the provisions hereinafter contained, (*q*) the preceding provisions of this Act shall apply to all portions of Judicial, Territorial and other Unorganized Districts of this Province; and in any prosecution or proceeding thereunder the Stipendiary Magistrate in any such district shall possess and exercise all the powers and jurisdictions of the Police Magistrate, or other convicting Justice or Justices of the Peace under this Act; and the lock-up of such district shall be deemed to be a gaol for the purpose of imprisonment under this Act; and any money penalty imposed and recovered shall, where the inspector is not the prosecutor, or the offence was not committed within any municipality, be paid to the Treasurer of Ontario; and the provisions of this Act applicable to township municipalities shall apply to all municipalities organized under *The Act respecting the Establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River.* R. S. O. 1877, c. 181, s. 98: This Act to apply to the territorial and unorganized districts. Rev. Stat. c. 185.

136. The Lieutenant-Governor in Council may declare any portion of a Judicial or Territorial District which is not within the jurisdiction of a municipal county, a license district, for the purposes of this Act, and the Lieutenant-Governor may appoint therefor a board of license commissioners and one or more inspectors. (*r*) R. S. O. 1877, c. 181, s. 99. License districts in judicial or territorial districts.

137. In any license district so formed an appeal shall lie from any decision of the Stipendiary Magistrate in any Appeal from stipendiary magistrate.

(*p*) The penalty only arises in case of "*wilful* neglect or default." See Sch. D., No. 19, for form of conviction.

(*q*) See secs. 136 to 140.

(*r*) See secs. 3, 4, 5 and 6.

prosecution or proceeding under this Act, to the Judge of such district, or to any County Judge to whom an appeal lies in other matters in such district. (*s*) R. S. O. 1877, c. 181, s. 100.

Appointment of commissioners, etc., in districts not within the jurisdiction of municipal councils or a license district.

138—(1) In such portions of Judicial or Territorial Districts as are not within the jurisdiction of any municipal county, and have not been included in any license district, under the provisions of section 136, the Lieutentant-Governor may appoint one or more persons as license commissioners and inspectors respectively for the granting of such number of tavern and shop licenses to such persons, for such places and periods, and upon such conditions as may be prescribed by Order in Council, such licenses to take effect from the 1st day of June in each year. (*t*)

Duties payable.

(2) For any such tavern or shop license, the duty payable shall be the sum of $60. (*u*) R. S. O. 1877, c. 181, s. 101.

Issue of licenses for places not within license district.

139. The licenses to be issued for the sale of spirituous, fermented, or other manufactured liquors in any place not within a license district, may be issued on such conditions and under such regulations as the Lieutenant-Governor in Council from time to time directs, subject to the provisions of this Act; and any bond which the Lieutenant-Governor in Council may direct to be taken from any person obtaining a license under this Act for any such place, conditioned for the observance of the law and of all regulations to be made under this section, shall be valid, and may be enforced according to its tenor. (*v*) R. S. O. 1877, c. 181, s. 102.

Powers of municipal corporations.

140. Any municipal corporation within any Judicial or Territorial District shall have the like authority in respect of taverns and shops therein, and the licenses therefor, as the like corporations in municipal counties possess under the provisions of this Act. (*w*) R. S. O. 1877, c. 181, s. 103.

MUNICIPALITIES UNDER THE TEMPERANCE ACTS.

27-8 V. c. 18, and R. S. C. c. 106, not affected by this Act.

141. Nothing in the foregoing provisions of this Act shall be construed to affect or impair any of the provisions of *The*

(*s*) See sec. 118.

(*t*) See sec. 8 *et seq.*

(*u*) See sec. 41 and notes thereto.

(*v*) See sec. 30.

(*w*) See note *j* to sec. 54.

Temperance Act of 1864 of the late Province of Canada, or the second part of *The Canada Temperance Act*, and no tavern or shop license shall be issued or take effect within any county, city, town, incorporated village, or township in Ontario within which any by-law for prohibiting the sale of liquor under the said Act is in force. R. S. O. 1877. c. 181, s. 104; 44 V. c. 27, s. 13.

Commissioners and inspectors may be appointed where Temperance Acts in force.

142. The Lieutenant-Governor in Council may, notwithstanding that any such by-law affects the whole or part of any county, or that the second part of *The Canada Temperance Act* is in force in the whole or part of any county, nominate a board of license commissioners of the number, and for the period mentioned in section 3 of this Act, and also an inspector; and the said board and inspector shall have, discharge and exercise all such powers and duties respectively for preventing the sale, traffic, or disposal of liquor contrary to the said Acts or this Act as they respectively have or should perform under this Act. 51 V. c. 30, s. 1.

Duties in such case.

143. The board of license commissioners and the inspector so appointed under this Act shall exercise and discharge all their respective powers and duties for the enforcement of the provisions of *The Temperance Act of 1864*, and the second part of *The Canada Temperance Act*, (*x*) as well as of this Act, so far as the same apply, within the limits of any county, city, incorporated village, or township in which any by-law under the said Acts is in force. R. S. O. 1877, c. 181, s. 106; 44 V. c. 27, s. 13.

27-8 V. c. 18 R. S. C. c. 106.

Wholesale licenses.

144. A wholesale license, (*y*) to be obtained under and subject to the provisions of this Act, shall be necessary, in order to authorize or make lawful any sale of liquor in the quantities allowed under the provisions of *The Temperance Act of 1864*, and the second part of *The Canada Temperance Act*. R. S. O. 1877, c. 181, s. 107; 44 V. c. 27, s. 13.

27-8 V. c. 18 R.S. C. c. 106.

Application of ss. 127, 128, and 141-144.

145. All the provisions of sections 127, 128, 141, 142, 143 and 144 of this Act shall be applicable to municipalities in

(*x*) The general prohibitory law being localized by municipal option may be enforced through the medium of provincial officers to be appointed and paid for according to provincial legislation. *License Commissioners of Frontenac* v. *County of Frontenac*, 14 O. R. 741.

(*y*) See sec. 2, sub-s. 4.

which the second part of *The Canada Temperance Act* is in force. (*z*) 44 V. c. 27, s. 13; 47 V c. 34, s. 34.

Municipal councils may aid in enforcing the Canada Temperance Act.

146.—(1) The council of any county, city, town, township, or village in which the second part of *The Canada Temperance Act* is in force, may, from time to time, set apart any sum or sums of money for the purpose of paying any officer or officers, person or persons, for enforcing, or assisting to enforce *The Canada Temperance Act* within their respective jurisdictions, and for the payment of any costs or expenses incurred in and about enforcing, or attempting to enforce, the same; and such councils are hereby authorized and empowered to appoint one or more officers or persons to enforce, or assist in enforcing, the provisions of the said Act, and to pass by-laws for the government and control of such officers or persons, and defining their duties and mode and amount of payment. 44 V. c. 27, s. 14.

Statements of receipts and expenses.

(2) Where the second part of *The Canada Temperance Act* is in force, and when the council has been called upon to pay a proportion of the expenses of its enforcement, the inspector shall at the close of each year, send to the council a statement in detail of the receipts and expenses of the year. 50 V. c. 33, s. 7.

Prosecutions where Temperance Acts in force.

147. The sale of liquor without license in any municipality where *The Temperance Act of 1864* is in force shall nevertheless be a contravention of sections 49 and 50 of this Act, and the several provisions of this Act shall have full force and effect in every such municipality except in so far as such provisions relate to granting licenses for the sale of liquor by retail. (*a*) R. S. O. 1877, c. 181, s. 108.

Expenses of enforcing Liquor License Act in

148—(1) The expenses of carrying into effect such of the provisions of this Act, or of the Acts or by-law hereinafter

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(*z*) The general law as to prohibition respecting all Canada, which can only be enacted by the Dominion (*Russell* v. *Regina*, 7 App. Cas. 829), being localized by municipal suffrages, its enforcement becomes a matter of local importance in the Province, within the meaning of sec. 92, sub-s. 16, of the B. N. A. Act, and may also fall within sub-s. 8 as pertaining to municipal institutions. *License Commissioners of Frontenac* v. *County of Frontenac*, 14 O. R. 741.

(*a*) The Local Legislature has no power to make the sale of liquor contrary to the Temperance Act of 1864, an offence against secs. 49 and 50 of this Act, so as to subject the persons selling to the penalties of the Ontario Act, in lieu of the penalties imposed by the Temperance Act of 1864. *Reg.* v. *Prittie*, 42 U. C. Q. B. 612, 623, 624.

mentioned, as may be in force in municipalities where a by-law prohibiting the sale of intoxicating liquors under *The Temperance Act of 1864*, or where the second part of *The Canada Temperance Act* is in force, except as is hereinafter by this Act provided, shall be borne and paid by the county within which any by-law for prohibiting the sale of liquor under *The Temperance Act of 1864*, or within which the second part of *The Canada Temperance Act* is in force; and where the by-law is that of a minor municipality, such expenses shall be paid by the minor municipality. municipalities under the Temperance Acts.

(2) The expenses payable under this section by a county, or by a minor municipality, shall be by them paid into the bank in which the license fund is kept to the credit of the license fund account for the license district, and shall become due and payable within one month after an estimate of the amount of the expenses for the current license year shall be made by the board of license commissioners for the license district, and approved by the Provincial Secretary (which approval shall be final and conclusive); (*b*) and after a copy or duplicate of such estimate and approval together with a notice in writing by the board of license commissioners, requesting payment of the amount payable by the municipality shall be served upon the clerk of the county, or minor municipality, or on such days and times as by the said request or notice are named for that purpose; and should any estimate prove insufficient for the payment of the expenses of the license year any deficiency may be provided for in the estimate for the succeeding year; and should any sums remain unexpended in any year, the same may be applied on account of the expenses of the succeeding year. Proportion payable by the Province or municipality, how and when to be paid.

(3) Payment may be enforced against any county, or minor municipality by the board of license commissioners in any Court of competent jurisdiction in the name and by the title of "The Board of License Commissioners for the License District of ," and it shall not be necessary to mention or include the names of the license commissioners in the proceedings; and the said action or proceedings may be carried on in the name of such board as fully and effectually as though such board were incorporated under the aforesaid name or title. In the event of the death or resignation of any of the license commissioners, or of the expiry of their Payment of proportion, how enforced.

(*b*) See *License Commissioners of Frontenac* v. *County of Frontenac*, 14 O. R. 741.

commission and of the re-appointment of the same, or of the appointment of other license commissioners, the proceedings, or action, shall not cease, abate, or determine, but shall proceed as though no change had been made in the commission or license commissioners, and in the event of said board being condemned in costs, the same may be payable out of the license fund.

Minor municipality, meaning of.

(4) The words "Minor Municipality" in this section shall be held to mean any municipality, other than a county or union of counties.

Expenses of enforcing C. T. Act in cities.

(5) In cities which are separate license districts in which the second part of *The Canada Temperance Act* is in force the expenses of enforcing or carrying into effect the provisions of the said Act shall be borne by the city as in the case of counties in which the said second part of the said Act is in force and such expenses of the city shall be estimated and ascertained, and become due and payable, and payment may be enforced against the city in the same manner or under like circumstances as are provided in the case of county municipalities and all of the provisions of this Act, having reference to the said expenses and the mode of ascertaining, fixing and collecting the same, which are applicable to counties in which the said second part of *The Canada Temperance Act* is in force shall also apply to cities in which the same is in force. 51 V. c. 30, s. 1.

Payment of expenses of license district where C. T. Act is in force in part only of district.

149. In any license district in which the second part of *The Canada Temperance Act* is is force, and the license district in addition to other portions of the county, embraces a city or town withdrawn from the county for municipal purposes wherein the said Act is not in force, the license fund of such city or town withdrawn from the county for municipal purposes shall be kept as a separate license fund for such city or town; and such city or town shall pay a just share of the expenses of such license district; and the same shall be determined by the board of license commissioners; and shall after approval by the Provincial Secretary be paid out of the license fund for such city or town; and in determining such share of expenses the board shall take into account with other circumstances, as far as may be, the proportion of the expenses incurred in said city or town. 51 V. c. 30, s. 1.

Duties payable for

150. The following license duties for licenses issued under

and in pursuance of sub-sections 4 and 8 of section 99, of *The Canada Temperance Act* shall hereafter be payable : licenses issued under sec. 99, sub-ss. 4 & 8, of R. S. C. c. 106.

For each druggist's or shop license in cities	$ 75	00
" " " towns	50	00
" " " other municipalities....	30	00
For each wholesale license in cities	150	00
" " towns	100	00
" " other municipalities..	60	00

49 V. c. 39, s. 8.

151. All sums received from duties on druggists' or shop licenses and for wholesale licenses, issued in municipalities in which the second part of *The Canada Temperance Act* is in force, and any sum paid by a municipality for or on account of such expenses as aforesaid, or by the Province, shall form the license fund of the city, county or license district respectively in which the said second part of *The Canada Temperance Act* shall be in force, and shall be applied under regulations of the Lieutenant-Governor in Council, towards payment of the salary and expenses of the inspector, and for the expenses of the office of the board of license commissioners and of officers, and otherwise in carrying the provisions of the second part of *The Canada Temperance Act* into effect, and the residue (if any) on the 30th day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council, may be applied on account of the expenses of the succeeding year. 51 V. c. 30, s. 1. Application of duties for licenses under preceding sections.

152—(1) In order to remove doubts it is hereby declared that the share of the expenses of any license district to be paid by any county council, and heretofore estimated by the boards of license commissioners, and which have been approved by the Provincial Treasurer or Secretary, after deducting any sum payable by any city or separated town, as hereinafter provided, shall be due and payable by the county council, notwithstanding the use of the words "whereby a by-law prohibiting the sale of intoxicating liquors is in force" under *The Canada Temperance Act*, or words of similar purport or meaning in any section of this Act, are made to apply to the said *Canada Temperance Act*, and as fully as though the same had read in lieu thereof in each and every case "where the second part of *The Canada Temperance Act* is in force," and it shall not be necessary to make or Provision for payment by municipalities of expenses of license district in which R. S. C. c. 106 is in force.

approve another estimate or serve a new copy or duplicate or demand, and the appointment of commissioners and inspectors by the Lieutenant-Governor or the Lieutenant-Governor in Council heretofore made in or for any county or district in which the said second part of *The Canada Temperance Act* was at the time in force, shall be as valid and effectual as though the statutes in this section mentioned or referred to had read as herein is provided. 50 V. c. 33, s. 1.

Share of expenses of license district to be paid by city or town in district in which R. S. C. c. 106 is in force.

(2) Where a city in which the second part of *The Canada Temperance Act* is in force, and which is not a separate license district, but forms part of a license district in which the said second part of *The Canada Temperance Act* is also in force as to the whole or part of the said license district, and where a town is separated from the county and forms part of a district in which the said second part of *The Canada Temperance Act* is in force, as to the whole or part thereof, the council of said city and of said town, respectively, shall pay a just share of the expenses of the license district of which it forms a part, and such share shall be separately estimated and determined by the board of license commissioners, and shall, after approval by the Provincial Secretary, be paid into the license fund of the license district of which said city or town forms part; and in determining such share of expenses the commissioners shall take into account with other circumstances as far as may be the proportion of the expenses of the district incurred in said city or town. 50 V. c. 33, s. 4.

(3) When a license district is formed of part of a county in which the second part of *The Canada Temperance Act* is in force, or of part of two counties in which the second part of the said Act is in force, or of part of a county in which the same is in force and of a county or part of a county in which it is not in force, the commissioners for the district shall estimate the amount of the expenses for the license year required for any such district or portion of district in which the second part of the said Act is in force as aforesaid, and after approval thereof by the Provincial Secretary and the service of a copy or a duplicate thereof and of a notice in writing requesting payment of the same, upon the clerk of the municipality, the amount so estimated and approved shall become due and payable into the license fund by the county at the time or times and in the same manner as is provided

for payment of the amount of the estimates in other cases, and the same may be recovered by the board of commisioners for the license district as in other cases.

(4) Where a county has not paid an estimate made before the passing of this Act in respect of any part of a county which forms part of a license district, and which estimate has been approved and where a duplicate or copy thereof has been served as in this section mentioned, the board of commissioners for the license district, of which said part of a county forms part may recover the amount of such estimate from the county as in other cases. (*g*) 51 V. c. 30, s. 2.

License district in places where the R. S. C. c. 106 is in force.

153. And it is further declared that the Lieutenant-Governor in Council shall have the same power and authority to create license districts when and where the second part of *The Canada Temperance Act* is in force, as under this Act, and where license districts are not or have not heretofore been created or provided by the Lieutenant-Governor in Council after the coming into force in any county or city of the second part of the said *Canada Temperance Act*, the license districts have been since the Act passed in the forty-fourth year of Her Majesty's reign, chapter 27, and are and shall be the same as under this Act, immediately prior to the coming into force of the said second part of *The Canada*

(*g*) The following enactment is contained in 51 V. c. 30, sec. 3:
3—(1) "Should the fines and penalties imposed under or by virtue of the said *Temperance Act of 1864*, or the by-law bringing the same in force, or the said *Canada Temperance Act*, and which shall be collected or recovered be insufficient to meet the expenses aforesaid after the payment of the salary and travelling expenses of any police magistrate appointed under the Act passed in the 48th year of Her Majesty's reign, chapter 17, and the Act passed in the 50th year of Her Majesty's reign, chapter 11, or either of them, or under chapter 72 of the Revised Statutes of Ontario, 1887, the Treasurer of the Province may pay into the license fund, out of the consolidated revenue, a sum not exceeding one-third of the amount which the municipality shall be required to pay for or on account of such expenses, as aforesaid, over and above the fines collected or recovered.

(2) "The treasurer of the county or other municipality to which the fines are payable shall keep a separate account of the fines received, and also of the amount paid or contributed by the municipality towards the expenses of enforcing the Act, and the payment of the salary and expenses of any police magistrate appointed under and by virtue of any of the Acts in this section hereinbefore mentioned; and the Province shall not be called upon to pay any proportion of the expenses so long as there is a balance at the credit of the said account."

Temperance Act, unless, or where the same have been, or shall have been, or shall be altered or changed by order in council or otherwise, and then as they have been so altered or changed, and until further order in that behalf. 50 V. c. 33, s. 2.

SCHEDULE A.

(*Section 30.*)

FORM OF BOND BY APPLICANT FOR A TAVERN LICENSE.

Know all men by these presents, that we *T. U.*, *V. W.*, of and *X. Y.*, of are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and successors, in the penal sum of $400 of good and lawful money of Canada—that is to say, the said *T. U.*, in the sum of $200, the said *V. W.*, in the sum of $100, and the said *X. Y.*, in the sum of $100 of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, firmly by these presents.

Whereas the above bounden *T. U.* is about to obtain a license to keep a tavern or house of entertainment in the of the condition of this obligation is such, that if the said *T. U.* pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any tavern or house of public entertainment, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands, and sealed them with our seals, this day of . A.D. 18 .

T. U. [L. S.]
V. W. [L. S.]
X. Y. [L. S.]

Signed, sealed and delivered in the presence of us.

R. S. O. 1877, c. 181, *Sched.* A.

SCHEDULE B.

(*Section 31.*)

FORM OF BOND BY APPLICANT FOR A SHOP LICENSE.

Know all men by these presents, that we, *T. U.*, of *V. W.* of *X. Y.*, of , are held and firmly bound unto Her

Majesty Queen Victoria, Her Heirs and Successors, in the penal sum of $400 of good and lawful money of Canada—that is to say, the said *T. U.* in the sum of $200, the said *V. W.* in the sum of $100, and the said *X. Y.* in the sum of $100 of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, firmly by these presents.

Whereas the above bounden *T. U.* is about to obtain a license to keep a shop wherein liquor may be sold by retail in the of ; the condition of this obligation is such, that if the said *T. U.* pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any shop wherein liquor may be sold by retail, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands and sealed them with our seals, this day of , A. D. 18.

T. U. [L. S.]
V. W. [L. S.]
X. Y. [L. S.]

Signed, sealed and delivered in the presence of us.

R. S. O. 1877, c. 181, *Sched.* B.

SCHEDULE C.

(Sections 94 and 103.)

GENERAL FORM OF INFORMATION.

ONTARIO County of York, To Wit: } THE INFORMATION of *A. B.* of the Township of York, in the County of York, License Inspector laid before me *C. D.* Police Magistrate, in and for the City of Toronto [*or* one of Her Majesty's Justices of the Peace, in and for the County of York], the day of A.D. 18 .

The said informant says, he is informed and believes that *X. Y.* on the day of A.D. 18 , at the Township of York, in the County of York, unlawfully did sell liquor without the license therefor by law required [*or as the case may be—See forms in Schedule D.*]

A. B.

Laid and signed before me the day and year, and at the place first above mentioned.
C. D.
P.M. or J.P.

R. S. O. 1877, c. 181, *Sched.* C.

SCHEDULE D.

(*Section 103.*)

FORMS FOR DESCRIBING OFFENCES.

1. *Neglecting to keep license exposed.* (Section 47.)

"That *X. Y.* having a license by wholesale [*or* a shop, *or* a tavern *or* a vessel license] on at unlawfully and wilfully (*or* negligently) omitted to expose the said license in his warehouse [*or* shop, *or* in the bar-room of his tavern, *or* in the bar-saloon, *or* bar-cabin of his vessel," *as the case may be.*]

2. *Neglecting to exhibit notice of license.* (Section 48.)

"That *X. Y.* being the keeper of a tavern [*or* inn *or* house *or* place of public entertainment] in respect of which a tavern license has duly issued and is in force, on at unlawfully did not exhibit over the door of such tavern [*or* inn, etc.,] in large letters the words, 'Licensed to sell wine, beer, and other spirituous or fermented liquors,' as required by *The Liquor License Act.*"

3. *Sale without license.* (Section 49.)

"That *X. Y.*, on the day of A.D. 18 at in the County of unlawfully did sell liquor without the license therefor by law required."

4. *Keeping liquor without license.* (Section 50.)

"That *X. Y.* on at unlawfully did keep liquor for th purpose of sale, barter and traffic therein, without the license therefor by law required."

5. *Sale of liquor on licensed premises during prohibited hours.* (Sections 54 and 71.)

"That *X. Y.* on at in his premises [*or* on, *or* out of, *or* from, his premises] being a place where liquor may be sold, unlawfully did sell [*or* dispose of] liquor during the time prohibited by *The Liquor License Act* (*or* by by-law of the Municipal Council of *or* of the License Commissioners for the District of *or as the case may be*), for the sale of the same, without any requisition for medical purposes as required by said Act being produced by the vendee or his agent."

6. *Allowing liquor to be drunk on licensed premises during prohibited hours.* (Sections 54 and 71.)

"That *X. Y.* on at in his premises, being a place where liquor may be [*or* is] sold, by retail [*or* wholesale] unlawfully did allow [*or* permit] liquor to be drunk in such place during the time prohibited by *The Liquor License Act* for the sale of the same, by a person other than the occupant, or some member of his family, or a lodger in his house."

7. *Sale of less than three-half pints under shop license.* Section 2 (3).

"That *X. Y.* having a shop license on at unlawfully did sell liquor in less quantity than three half-pints."

8. *Sale under wholesale license in less than wholesale quantities.* (Sections 2 (4), and 51.)

"That *X. Y.* having a license to sell by wholesale on at unlawfully did sell liquor in less quantity than five gallons [*or*, than one dozen bottles of three half-pints each, *or* than two dozen bottles of three-fourths of a pint each]."

9. *Allowing liquor to be consumed in shop.* (Section 60.)

"That *X. Y.* having a shop license on at unlawfully did allow liquor sold by him (*or* in his possession), and for the sale of which a license is required, to be consumed within his shop [*or* within the building of which his shop forms part, *or*, within a building which communicates by an entrance with his shop], by a purchaser of such liquor [*or*, by a person not usually resident within the building of which such shop forms a part.]"

10. *Allowing liquor to be consumed on premises under wholesale license.* (Section 61.)

"That *X. Y.* having a license by wholesale, on at unlawfully did allow liquor sold by him [*or* in his possession for sale] and for the sale of which such license is required, to be consumed within his warehouse [*or* shop, *or* within a building which forms part of, (*or* is appurtenant to *or* which communicates by an entrance with a warehouse or shop, *or* premises) wherein an article to be sold (*or* disposed of) under such license, is sold by retail (*or* wherein there is kept a broken [package of an article for sale under such license)]."

11. *Illegal sale by druggists.* (Section 52.)

"That *X. Y.* being a chemist [*or* druggist] on at did unlawfully sell liquor for other than strictly medicinal purposes [*or* sell liquor in packages of more than six ounces at one time without a certificate from any registered medical practitioner, *or* sell liquor without recording the same], as required by *The Liquor License Act*."

12. *Illegal sale under vessel license.* (Section 59.)

"That *X. Y.* being authorized to sell liquor on a vessel called the *Spartan*, on at unlawfully did sell [*or* dispose of] liquor to be consumed by a person other than a passenger on such vessel while in port [*or* unlawfully did allow liquor to be consumed on such vessel during the time prohibited by *The Liquor License Act* for the sale of the same, without any requisition for medical purposes, as required by said Act]."

13. *Keeping a disorderly house.* (Section 79.)

"That *X. Y.* being the keeper of a tavern [*or* ale-house, *or* beer-house, *or* house of public entertainment], situate in the City [*or* Town, *or* Village, *or* Township], of in the County of on in his said tavern [*or* house] unlawfully did sanction [*or* allow] gambling, [*or* riotous, *or* disorderly conduct] in his said tavern [*or* house]."

14. *Harbouring constables on duty.* (Section 80.)

"That *X. Y.* being licensed to sell liquor at on unlawfully and knowingly did harbour [*or* entertain *or* suffer to abide and remain on his premises] *O. P.*, a constable belonging to a police

force, during a part of the time appointed for his being on duty, and not for the purpose of quelling a disturbance or restoring order, or executing his duty."

15. *Compromising or compounding a prosecution.* (Section 81.)

"That *X. Y.* having violated a provision of *The Liquor License Act*, on at unlawfully did compromise [*or* compound, *or* settle, *or* offer, *or* attempt to compromise, compound *or* settle], the offence with *A. B.*, with the view of preventing any complaint being made in respect thereof [*or* with the view of getting rid of *or* of stopping, *or* of having the complaint made in respect thereof dismissed, *as the case may be*]."

16. *Being concerned in compromising a prosecution.* (Section 82.)

"That *X. Y.* on at , unlawfully was concerned in [*or* a party to] a compromise [*or* a composition, *or* a settlement] of an offence committed by *O. P.*, against a provision of *The Liquor License Act.*"

17. *Tampering with a witness.* (Section 84.)

"That *X. Y.*, on a certain prosecution under *The Liquor License Act*, on at unlawfully did tamper with *O. P.*, a witness in such prosecution before [*or* after] he was summoned [*or* appeared] as such witness on a trial [*or* proceeding] under the said Act, [*or* unlawfully did induce, *or* attempt to induce *O. P.*, a witness in such prosecution, to absent himself, *or* to swear falsely]."

18. *Refusing to admit policeman.* (Section 130.)

"That *X. Y.* on the at being in (*or* having charge of) the premises of *O. P.*, being a place where liquor is sold [*or* reputed to be sold], unlawfully did refuse [*or* fail] to admit [*or* did obstruct *or* attempt to obstruct] *E. F.*, an officer demanding to enter in the execution of his duty [*or* did obstruct *or* attempt to obstruct *E. F.*, an officer making searches in said premises, and in the premises connected with such place]."

19. *Officer refusing to prosecute.* (Sections 129 and 134.)

"That *X. Y.*, being a police officer [*or* constable, *or* Inspector of Licenses] in and for the Township of York, in the County of York, knowing that *O. P.* had on at committed an offence against a provision of *The Liquor License Act*, unlawfully and wilfully did and still does neglect to prosecute the said *O. P.*, for his said offence."

R. S. O. 1877, c. 181, *Sched. D.*

SCHEDULE E.

(*Section* 103.)

FORM OF INFORMATION FOR SECOND, THIRD, OR FOURTH OFFENCE.

ONTARIO, - } THE INFORMATION of *A. B.*, of etc., License
County of York, } Inspector laid before me *C. D.*, Police Magis-
To Wit: } trate in and for the City of Toronto [*or* one of

Her Majesty's Justices of the Peace in and for the County of York], the day of , A.D 18 .

The said Informant says he is informed and believes that *X. Y.* on at [*describe last offence*].

And further that the said *X. Y.* was previously, to wit: on the 15th day of December, A. D. 1886, at the City of Toronto, before *C. D.*, Police Magistrate in and for the City of Toronto [*or* at the Township of York, in the County of York, before *E. F.* and *G. H.*, two of Her Majesty's Justices of the Peace for the County of York], duly convicted of having on the 30th day of November, 1886, at the Village of Aurora in the County of York, unlawfully sold liquor without the license therefor required by law [*or as the case may be*].

And further that the said *X. Y.* was previously, to wit: on the 28th day of November, A.D. 1886, at the Township of Vaughan, in the County of York, before, etc. [*as in preceding paragraph*], again duly convicted of having on the 10th day of November, A.D. 1886, at the Township of Etobicoke, in the County of York, having a shop license, unlawfully allowed liquor to be consumed within a building which communicates by an entrance with his shop, by a person not usually resident within the building of which such shop forms a part [*or as the case may be*].

And further, that the said *X. Y.* was previously, to wit: on the 30th day of October, A. D. 1886, at the Town of Newmarket, in the County of York, before, etc. (*see above*), again duly convicted of having, on the 25th day of September, A. D. 1886, at the Village of Aurora in the County of York (being in charge of the premises of *O. P.*, a place were liquor was reputed to be sold), unlawfully failed to admit *E. F.*, an officer demanding to enter in the execution of his duty.

And the Informant says the offence hereinbefore firstly charged against the said *X. Y.*, is his fourth offence against *The Liquor License Act*.

A. B.

Laid and signed before me the day and year, and at the place first above mentioned.

C. D.
J. P.

R. S. O. 1877, c. 181, *Sched. E.*

SCHEDULE F.

(*Section* 103.)

SUMMONS TO WITNESS.

ONTARIO, County of York, To Wit: } To *J. K.*, of the City of Toronto, in the County of York,

Whereas, information has been laid before me, *C. D.*, one of Her

Majesty's Justices of the Peace in and for the County of York (*or* Police Magistrate for the City of Toronto), that *X. Y.*, being a druggist, on the 10th day of January, A. D. 18 , at the Township of Vaughan, in the County of York, unlawfully did sell liquor for other than strictly medicinal purposes, and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecutor in this behalf.

These are to require you, under pain of imprisonment in the Common Gaol, personally to be and appear on Tuesday, the 16th day of January, A.D. 18 , at ten o'clock in the forenoon, at the Town Hall in the Village of Richmond Hill, before me, or such Justice or Justices of the Peace as may then be there, to testify what you shall know in the premises [and also to bring with you and there and then to produce all and every invoices, cash books, day books, or ledgers and receipts, promissory notes, or other security relating to the purchase or sale of liquor by the said *X. Y.*, and all other books and papers, accounts, deeds, and other documents in your possession, custody or control, relating to any matter connected with the said prosecution].

Given under my hand and seal this 12th day of January, A.D. 18 at the Village of Richmond Hill, in the County of York.

C. D.,
J. P. (L. S.)

R. S. O. 1877, c. 181, *Sched. F.*

SCHEDULE G.

(*Section* 103.)

FORM OF CONVICTION FOR FIRST OFFENCE.

ONTARIO, County of York, To Wit: } BE IT REMEMBERED that on the 6th day of January, A.D. 18 , at the City of Toronto, in the said County of York, *X. Y.* is convicted before me, *C. D.*, Police Magistrate in and for the City of Toronto (*or* before us, *E. F.* and *G. H.*, two of Her Majesty's Justices of the Peace, in and for the said County), for that he the said *X. Y.*, on the 2nd day of January, A. D. 18 , at the Township of York, in the said County, in his premises, being a place where liquor may be sold, unlawfully did sell liquor during the time prohibited by *The Liquor License Act* for the sale of the same, without any requisition for medicinal purposes as required by said Act, being produced by the vendee or his agent (*or as the case may be*), *A. B.* being the informant, and I (*or* we) adjudge the said *X. Y.*, for his said offence to forfeit and pay the sum of $20, to be paid and applied according to law, and also to pay to the said *A. B.* the sum of $6 for his costs in this behalf, and if the said several sums be not paid forthwith, then* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said *X. Y.*, and in default of sufficient distress in that behalf* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no*

*goods whereon to levy a distress, then instead of the words between the asterisks** say* "inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to the said *X. Y.* and his family," *or* "that the said *X. Y.* has no goods or chattels whereon to levy the said several sums by distress"], I (*or* we) adjudge the said *X. Y.* to be imprisoned without hard labour [*or* with hard labour, *as the case may be*] in the Common Gaol for the County of York, at Toronto, in the said County, and there to be kept for the space of *fifteen days*, unless the said sums and the costs and charges of conveying the said *X. Y.* to the said Common Gaol, shall be sooner paid.

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at the Clty of Toronto, in the County aforesaid.

C. D., (L.S.)
Police Magistrate.
or E.F.,
J.P. (L.S.)
G.H.,
J.P. (L.S.)

R. S. O. 1877, c. 181, *Sched.* G; 44 V. c. 27, s. 26.

SCHEDULE H.

(*Section* 103).

FORM OF CONVICTION FOR A THIRD OFFENCE.

ONTARIO, County of York, To Wit: } BE IT REMEMBERED that on the 22nd day of January, A.D. 1887, in the City of Toronto, in the said County, *X. Y.* is convicted before the undersigned *C. D.*, Police Magistrate in and for the City of Toronto, in the said County [*or C. D.* and *E. F.*, two of Her Majesty's Justices of the Peace in and for the said County], for that he, the said *X. Y.*, on the 30th day of December, A.D. 1886, at the City of Toronto [*or* Township of Scarboro] in said County (*as the case may be*), having violated a provision of *The Liquor License Act*, unlawfully did attempt to settle the offence with *A. B.*, with the view of having the complaint made in respect thereof dismissed. And it appearing to me [*or* us] that the said *X. Y.* was previously, to wit: on the 15th day of December, A.D. 1886, at the City of Toronto, before, etc. duly convicted of having, on the 30th day of November, A.D. 1886, at the Village of Aurora, unlawfully sold liquor without the license therefor by law required. And it also appearing to me [*or* us] that the said *X. Y.* was previously. to wit: on the 28th day of November, A.D. 1886, at the Township of Vaughan, before, etc., (*see above*) again duly convicted of having, on the 2nd day of November, A.D. 1886, at the Village of Markham, being the keeper of a tavern situate in the said Village of Markham, unlawfully allowed gambling in his said tavern (*or as the case may be*).

I [*or* we], adjudged the offence of said *X. Y.* hereinbefore firstly mentioned, to be his third offence against *The Liquor License Act*, (*A. B.* being the informant) and I [*or* we], adjudged the said *X. Y.* for his said third offence to be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, there to be kept without hard labour [*or* with hard labour, *as the case may be*] for the space of three calendar months (*or as the case may be*).

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at Toronto, in the County of York.

C. D. (L. S.)

or

C. D. (L. S.)
E. L. (L. S.)

R. S. O. 1877, c. 181, *Sched.* H; 44 V. c. 27, s. 26.

SCHEDULE I.

(*Section* 103).

WARRANT OF COMMITMENT FOR FIRST OFFENCE WHERE A PENALTY IS IMPOSED.

ONTARIO, County of York, To Wit: } To ALL or any of the Constables or other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County at Toronto, in the County of York.

Whereas, *X. Y.*, late of the City of Toronto, in the said County, was on this day convicted before the undersigned, *C. D.*, Police Magistrate in and for the City of Toronto [*or C. D.* and *E. F.*, two of Her Majesty's Justices of the Peace in and for the City of Toronto *or* County of York, (*as the case may be*)] for that he, the said *X. Y.* on at unlawfully did sell liquor without the license therefor by law required (*state offence as in the conviction*), (*A. B.* being the informant), and it was thereby adjudged that the said *X. Y.*, for his said offence, should forfeit and pay the sum of (*as in conviction*), and should pay to the said *A. B.* the sum of for his costs in that behalf.

And it was thereby further adjudged that if the said several sums should not be paid forthwith the said *X. Y.* should be imprisoned in the Common Gaol of the said County at Toronto, in the said County of York, there to be kept at hard labour (*or* without hard labour, *as the case may be*) for the space of , unless the said several sums and the costs and charges of conveying the said *X. Y.* to the said Common Gaol should be sooner paid.

And whereas the said *X. Y.* has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed.

[*If a distress warrant issued and was returned no goods, or not sufficient goods say*, "And whereas, afterwards on the 15th day of

January, A. D. 1887, I, the said Police Magistrate (*or* we, the said Justices), issued a warrant to the said Constables or Peace Officers, or any of them, to levy the said several sums of and by distress and sale of the goods and chattels of the said *X Y.* ;

"And whereas it appears to me (*or* us) as well, by the return of the said warrant of distress by the Constable who had the execution of the same as otherwise, that the said Constable has made diligent search for the goods and chattels of the said *X. Y.*, but that no sufficient distress whereon to levy the said sums could be found."]

[*Or where the issuing of a distress warrant would be ruinous to the defendant and his family, or if it appears that he has no goods whereon to levy a distress, then, instead of the foregoing recitals of the issue and return of the distress warrant, etc., say :*

"And whereas it has been made to appear to me (*or* us), that the issuing of a warrant by distress in this behalf would be ruinous to the said *X. Y.* and his family," *or* "that the said *X. Y.* has no goods or chattels whereon to levy the said sums by distress," *as the case may be*].

These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said *X. Y.* and him safely convey to the Common Gaol aforesaid, at Toronto, in the County of York, and there deliver him to the said Keeper thereof, together with this precept.

And I (*or* we) do hereby command you, the said Keeper of the said said Common Gaol, to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and keep him for the space of (without hard labour *or* with hard labour *as the case may be*) unless the said several sums and all the costs and charges of the said distress, amounting to the sum of , and of the commitment and conveying of the said *X. Y.* to the said Common Gaol, amounting to the further sum of shall be sooner paid unto you the said Keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal (*or* our hands and seals) this day of A. D. 18 , at Toronto, in the said County of York.

C. D. (L.S.)
or C. D. (L.S.)
E. F. (L.S.)

R. S. O. 1877, c. 181, *Sched* I; 44 V. c. 27, s. 26.

SCHEDULE J.

(Section 103.*)*

WARRANT OF COMMITMENT FOR SECOND (*or* THIRD) OFFENCE, WHERE PUNISHMENT IS BY IMPRISONMENT ONLY.

ONTARIO, County of York. To Wit : } To ALL or any of the Constables and other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County, at Toronto in the County of York.

Whereas *X. Y.*, late of the of in the said County, was

on this day convicted before the undersigned *C. D.*, etc., (*or C. D.* and *E. F.*, etc., *as in preceding form*); for that he the said *X. Y.* on at (*state offence with previous convictions as set forth in the conviction for the second or third offence, or as the case may be, and then proceed thus*): "And it was thereby adjudged that the offence of the said *X. Y.*, hereinbefore firstly mentioned, was his second (*or* third) offence against *The Liquor License Act*, (*A. B.* being the informant). And it was thereby further adjudged that the said *X. Y.*, for his said second (*or* third) offence should be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, and there to be kept without hard labour (*or* with hard labour *as the case may be*) for the space of three calendar months."

These are therefore to command you the said Constables, or any one of you, to take the said *X. Y.* and him safely convey to the said Common Gaol at Toronto aforesaid, and there deliver him to the Keeper thereof, with this precept. And I (*or* we) do hereby command you, the said keeper of the said Common Gaol, to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and to keep him without hard labour (*or* with hard labour *as the case may be*), for the space of three calendar months.

Given under my hand and seal (*or* our hands and seals), this day of A. D. 18 , at Toronto, in the said County of York.

C. D. (L.S.)
or C. D. (L.S.)
E. F. (L.S.)

R. S. O. 1877, c. 181, *Sched.* J ; 44 V. c. 27, s. 26.

SCHEDULE K.

(*Section* 132.)

FORM OF DECLARATION OF FORFEITURE AND OF ORDER TO DESTROY LIQUOR SEIZED.

If in conviction, after adjudging penalty or imprisonment, as in Schedule G, proceed thus :

"And I [*or* we] declare the said liquor and vessels in which the same is kept, to wit: two barrels containing beer, three jars containing whiskey, two bottles containing gin, four kegs containing lager beer, and five bottles containing native wine, [*or as the case may be*], to be forfeited to Her Majesty, and I [*or* we] do hereby order and direct that *T. D.*, License Inspector of the City of Toronto [*or J. P. W.*, License Inspector of the *East Riding of the County of York*], do forthwith destroy the said liquor and vessels.

Given under my hand and seal the day and year first above mentioned, at, etc.

If by separate or subsequent Order :

"COUNTY OF YORK, } We, *E. F.* and *G. H.*, two of Her Majesty's
To Wit: } Justices of the Peace for the County of York

[*or C. D.*, Police Magistrate of the City of Toronto], having on the 15th day of March, 1887, at the Township of Scarborough in said County, duly convicted *X. Y.* of having unlawfully kept liquor for sale without license, do hereby declare the said liquor and vessels in which the same is kept, to wit:—[*describe the same as above*], to be forfeited to Her Majesty, and we [*or* I] do hereby order and direct that *J. P. W.*, License Inspector of the East Riding of the said County, do forthwith destroy the said liquor and vessels."

Given under our [*or* my] hands and seals, this 17th day of March, A. D. 18 , at the Township of Scarborough in the said County.

E. F. [L.S.]
or G. H. [L.S.]
C. D. [L.S.]

44 V. c. 27, *Sched.* K.

SCHEDULE L.

(*Sections* 23 *and* 24.)

FORM FOR DESCRIBING OFFENCES FOR SELLING, GIVING, OR KEEPING OTHER LIQUORS BY HOLDER OF BEER AND WINE LICENSE.

"That *X. Y.* being the holder of a Beer and Wine License, on at did unlawfully sell [*or* give, *or* keep for sale] other liquor than is authorized by his license, in the house and upon the premises for which such license has been granted."

44 V. c. 27, *Sched.* L.

SCHEDULE M.

(*Section* 37.)

PROVISIONAL CONSENT TO TRANSFER OF LICENSE BY THE INSPECTOR, PENDING THE DECISION OF THE BOARD OF COMMISSIONERS.

In pursuance of section 37, sub-section 2, of chapter 194 of the Revised Statutes of Ontario, I hereby consent that the Licensee named in the annexed license, his assigns or legal representatives, may provisionally transfer the hereunto annexed license, and all his and their interests therein to
to be held by him subject to all the provisions of the said Revised Statute; the written consent to such transfer by the Board of Commissioners, to be hereafter obtained within the time prescribed by law.

Dated this day of A.D. 188 .

Inspector.

N. B.—This provisional consent shall remain in force for days from the date thereof, and no longer.

Countersigned,

Commissioner.

44 V. c. 27, *Sched.* M.

R. S. O. cap. 195.

An Act to regulate travelling on Public Highways and Bridges.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

HIGHWAYS.

Carriages meeting to drive to the right, giving half the road.

1. In case a person travelling or being upon a highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one-half of the road. R. S. O. 1877, c. 183, s. 1.

Carriages overtaken to turn to the right.

2. In case a person travelling or being upon a highway in charge of a vehicle as aforesaid, or on horseback, is overtaken by any vehicle or horseman travelling at greater speed, the person so overtaken shall quietly turn out to the right and allow the said vehicle or horseman to pass. R. S. O. 1877, c. 183, s. 2.

Driver unable to turn out is to stop.

3. In the case of one vehicle being met or overtaken by another, if, by reason of the extreme weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if required so to do, he shall assist the person in charge thereof to pass without damage. R. S. O. 1877, c. 183, s. 3.

Penalty on drivers, etc., too drunk to manage their horses.

4. In case a person in charge of a vehicle, or of a horse or other animal used as the means of conveyance, travelling or being on a highway as aforesaid, is, through drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. R. S. O. 1877, c. 183, s. 4.

5. No person shall race with or drive furiously any horse or other animal, or shout, or use any blasphemous or indecent language upon any highway. R. S. O. 1877, c. 183, s. 5. Racing, swearing, etc., on highways forbidden.

6. Every person travelling upon a highway with a sleigh, sled, or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. R. S. O. 1877, c. 183, s. 6. Sleigh horses to have bells.

BRIDGES.

7. Every person who has the superintendence and management of any bridge exceeding thirty feet in length shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed, in the following form: Notice to be posted at bridges.

"Any person or persons riding or driving on or over this bridge at a faster rate than a walk will, on conviction thereof, be subject to a fine, as provided by law." Form of.

R. S. O. 1877. c. 183, s. 7.

8. In case a person injures or in any way interferes with such notice be shall incur a fine of not less than $1 nor more than $8, to be recovered in the same manner as other penalties imposed by this Act. R. S. O. 1877, c. 183, s. 8. Penalty on persons defacing such notice.

9. If, while such notice continues up, a person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. R. S. O. 1877, c. 183, s. 9. Fast driving over bridges forbidden.

RECOVERY AND APPLICATION OF PENALTIES.

10. In cases not otherwise specially provided for, if any person contravenes this Act, and such contravention is duly proved by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than $1 nor more than $20, in the discretion of the Justice, with costs. R. S. O. 1877, c. 183, s. 10. Penalty for contravening this Act.

11. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty and costs and charges of sale shall be returned, on demand, to the owner of the goods and chattels. R. S. O. 1877, c. 183, s. 11. To be enforced by distress.

Or by imprisonment.

12. In default of payment of distress the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless the fine, costs and charges are sooner paid. R. S. O. 1877, c. 183, s. 12.

Not to bar action for damages.

13. No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. R. S. O. 1877, c. 183, s. 13.

Application of penalties.

14. Every fine collected under this Act shall be paid to the treasurer of the local municipality or place in which the offence was committed, and shall be applied to the general purposes thereof. R. S. O. 1877, c. 183, s. 14.

R. S. O. cap. 196.

An Act exempting certain Vehicles, Horses, and Cattle from Tolls on Turnpike Roads

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Exemption from tolls in certain cases.

1. Officers, non-commissioned officers, and men of the Volunteers, being in proper staff or regimental uniform, dress or undress, and their horses (but not when passing in any hired or private vehicle, unless when on duty or proceeding to or from the same), (*a*) shall be exempt from the

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(*a*) The defendant coming in a private carriage to a toll gate refused to pay on the ground that he was in uniform and adjutant of the military train, and was therefore exempt. Being brought up before a magistrate, he claimed exemption under *The Mutiny Act*, and was convicted for wilfully passing the gate without paying: Held, that the conviction was proper, for by *The Mutiny Act*, 25 V. c. 5, s. 72, he was exempt only if on duty, of which there was no evidence, and being in a private vehicle he was expressly excluded from exception under Con. Stat. U. C. c. 49, s. 91. *Reg.* v. *Davies*,

payment of any duty or toll on passing any turnpike or toll-gate,or any road, wharf or landing-place or bridge in this Province. R. S. O. 1877, c. 184, s. 1.

Persons going to or returning from Divine service exempted from toll.

2. All persons going to or returning from Divine service on any Sunday or statutory holiday, in or upon and with their own carriages, horses, or other beasts of draught, and also their families, and servants being in or upon and with such carriages, horses, or other beasts of draught, shall pass toll-free through every turnpike or toll gate on any turnpike road through which they may have occasion to pass, whether such turnpike road and the tolls thereon belong to the Province, or to any local or municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated company, or to any other body or person. R. S. O. 1877, c. 184, s. 2.

Vehicles, cattle, etc., using road when a farm divided by the road, exempt from toll—when.

3. No vehicle, laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate on such road (at whatever distance the same may be from any city or town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same: Provided such vehicle, horses, or cattle do not proceed more than half a mile along such turnpike road, either in going or in returning, and are using such road for farming or domestic purposes only. R. S. O. 1877, c. 184, s. 3.

Vehicles, etc, laden with manure passing from cities and towns exempt from toll.

4. Every vehicle laden solely with manure, brought from any city, town, or incorporated village in this Province, and employed to carry manure into the country parts for the purposes of agriculture, and the horse or horses, or other beast of draught, drawing such vehicle, shall pass toll free through every turnpike-gate or toll-gate on any turnpike or macadamized road within twenty miles of such city, town, or incorporated village, as well in going from such city, town, or incorporated village as in returning thereto, if the vehicle is then empty. R. S. O. 1877, c. 184, s. 4.

Application of Act.

5. This Act shall not extend to any toll bridge, the tolls on which are vested in any person other than the Crown. R. S. O. 1877, c. 184, s. 5.

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22 U. C. Q. B. 333: Held, also, that the conviction could not be quashed on the ground of his being on duty as the exemption had not been claimed on that account. *Ib.*

R. S. O. cap. 197.

An Act respecting Double Tracks in Snow Roads.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation—"team."

1. In this Act, the word "Team" shall be taken to mean a vehicle drawn by one horse or other animal, or a greater number of horses or other animals, as the case may be. R. S. O. 1877, c. 185, s. 1.

County council may pass by-laws for making double tracks on roads during sleighing season.

2. The county council of each county may provide, by by-law, for the making of a double track, during the season of sleighing in each and every year, upon such public or leading roads within the county, whether county roads or not, as such council deems advisable. R. S. O. 1877, c. 185, s. 2.

Nature of tracks.

3. Whenever a county council has passed such a by-law, the double track to be made shall be so made that teams shall be able to pass without being obliged to turn out when meeting each other. R. S. O. 1877, c. 185, s. 3.

Right of road.

4. The right hand track shall always be that in which a team shall be required to travel, and if any person is driving his team in the wrong track, it shall be his duty to leave the same whenever he meets another team rightfully entitled to use such track. R. S. O. 1877, c. 185, s. 4.

Duties and powers of path-masters or road-masters.

5. A county council may also provide, by by-law, that path-masters (*a*) appointed by township councils shall cause the roads on which double tracks are to be made to be kept open for travel within their respective municipalities, or in the

(*a*) A path-master is "an officer or person fulfilling a public duty" within the meaning of Rev. Stat. c. 73, s. 1, and for anything done by him in the performance of such public duty he is entitled to the protection of the statute; but where, professing to act as a public officer, he seeks to promote his interest by some act, he disentitles himself to the protection of the statute and may be proceeded against for such act as if he was a private individual. *Stalker* v. *Township of Dunwich*, 15 O. R. 342.

event of there being no such path-masters available, may appoint road-masters to perform that duty; and such path-masters or road-masters shall have full power to call out persons liable to perform statute labour, to assist in keeping open such roads within their respective municipalities, and may give to such persons as may be employed in so doing, certificates of having performed statute labour to the amount of the days' work done, and such work shall be allowed for to such persons in their next season's statute labour; and such county council may also provide for the application by such township council of so much of the commutation of statute labour fund as may be necessary for the keeping open such roads as aforesaid within their respective municipalities. (*b*) R. S. O. 1877, c. 185, s. 5.

If township refuse to make tracks, county may do so and impose a rate.

6. In the event of a township council neglecting or refusing to keep such roads open for travel as mentioned in the next preceding section of this Act, the county council shall be entitled to do so, and to impose upon the township so in default a rate sufficient for that purpose, and such rate shall be levied and collected in the manner provided by *The Assessment Act* as to the collection of county rates. R. S. O. 1877, c. 185, s. 6.

Rev. Stat. c. 193.

Penalty for persons refusing to work under path-masters.

7. Any person who is liable to perform statute labour, and refuses or neglects to turn out and work under any path-master or road-master who warns him out for that purpose under the authority of this Act, shall be liable to a fine not exceeding $20, nor less than $1, over and above costs, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days. R. S. O. 1877, c. 185, s. 7.

Penalty for travelling on left hand track and refusing to turn out.

8. Any person travelling in the wrong or left hand track, and refusing or neglecting to leave the same when met by a person who is travelling therein with his team as of right, shall be liable to a penalty of not less than $1, nor more than $20, over and above the costs of prosecution, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days. R. S. O. 1877, c. 185, s. 8.

(*b*) See sec. 87 *et seq.* of *The Assessment Act.*

R. S. O. cap. 198.

An Act respecting Snow Fences.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Councils may require owners or occupants of land to remove fences;

Making compensation therefor.

1—(1) The council of every township, city, town, or incorporated village shall have power to require owners or occupiers of lands bordering upon any public highway, to take down, alter, or remove any fence found to cause an accumulation of snow or drift so as to impede or obstruct the travel on the public highway, or any part thereof, and where such power is exercised they shall make such compensation to the owners or occupants for the taking down, alteration or removal of such fence and for the construction of some other description of fence approved of by the council, in lieu of the one so required to be taken down, altered, or removed, as may be mutually agreed upon ; and if the council and the owners or occupants cannot agree in respect to the compensation to be paid by the council, then the same shall be settled by arbitration in the manner provided by *The Municipal Act*, and the award so made shall be binding upon all parties. 44 V. c. 26, s. 1.

Rev. Stat. c. 184.

Erection of wire fences on lands bordering on highways.

(2) Where, in a township, the owners and occupants of all the lands bordering upon the side of a public highway, within the jurisdiction of the council of the municipality, or upon so much of the highway as either extends from front to rear of any concession or lies between any two side line roads, petition the council of the township to pass, under the provisions of this section, a by-law requiring the owners and occupiers to erect and maintain a wire fence between said lands and the highway, the council shall have power to pass the same, and to provide that the fence shall be so erected and maintained by the owners and occupants on and along the highway, at a uniform distance not exceeding six feet from that side thereof on which the lands border as aforesaid, and that every such owner and occupant shall have the right to occupy and enjoy so much of the highway as shall be

situate between the fence when erected, and his land bordering upon the highway, so long as the fence is by him maintained, as by the by-law may be required; and in every such case the right to occupy and enjoy a part of the highway as aforesaid, shall be in lieu of and a full satisfaction of all compensation which, under any other provision of this section, would require to be made to the owner or occupant, and as if the same had been agreed to by him: Provided always that under the provisions of this sub-section no highway or part of a highway shall be reduced to or made less than fifty-four feet in width: Provided, moreover, that for all purposes of this Act, the date of the passing of the by-law shall be taken as the time from which the two months mentioned in section 2 of this Act shall be computed. 49 V. c. 40, s. 1.

Power in case of neglect or refusal by owner or occupant to construct fence as directed.

2. In case the owner or occupant shall refuse or neglect to take down, alter, or remove the fence and to construct such other fence as required by the council, the council may, after the expiration of two months from the time the compensation to be paid by the council has been agreed upon or settled by arbitration, proceed to take down, alter, or remove the old fence and construct the other description of fence which has been approved of by the council, and the amount of all costs and charges thereby incurred by the council over and above the amount of compensation agreed upon or settled by arbitration, may immediately be recovered from such owner or occupier, by action in any Division Court having jurisdiction in the locality, and the amount of the judgment in favour of the municipality obtained in such Court, shall, if not sooner paid, be, by the clerk of the municipality, placed upon the next collector's roll as taxes against the lands upon or along the boundaries of which the fence is situate, and after being placed upon the collector's roll, shall be collected and treated in all respects as other taxes imposed by by-laws of the municipality; when a tenant or occupant, other than the owner, shall be required to pay the aforesaid sum, or any part thereof, the tenant or occupant may deduct the same, and any costs paid by him, from the rent payable by him, or may otherwise recover the same, unless the tenant or occupant shall have agreed with the landlord to pay the same. 44 V. c. 26, s. 2.

Power to enter on lands.

3. The council of every township, city, town, or incorporated village shall have power, on and after the 15th day

of November in each year, to enter into and upon any lands of Her Majesty, or into and upon any lands of any corporation or person whatsoever, situate within said township, city, town or village, and lying along any road or public highway in or adjoining any such municipality, and to erect and to maintain snow fences thereon, subject to the payment of such damages (if any) as may be actually suffered by the owner or owners of the lands entered upon, the amount thereof to be ascertained, if not mutually agreed upon, by arbitration, under *The Municipal Act*: Provided always, that such snow fences so erected shall be removed on or before the 1st day of April following. 49 V. c. 40, s. 2.

Rev. Stat. c. 184.

R. S. O. cap. 199.

An Act to provide for the crossing of Railways by Streets, Drains, and Water Mains.

Short title, s. 1.
Application of Act, ss. 2, 29, 30.
Interpretation, s. 3.
Powers as to roads, drains, and water mains on railway lands, ss. 4, 5, 23.
Plans and notices, ss. 6-8.
Execution of works, ss. 9-19.
Reference to Commissioner of Public Works, ss. 11-16.
Compensation to company, ss. 20-22.
Rapairs of street crossings, s. 24.
Drains and water pipes, s. 24.
Maintaining level of highway, s. 25.
Maintaining level of railway, s. 25.
Railway not to be injured, s. 26.
Highways to be subject to railway Act, s. 27.
Rights of railways preserved, s. 28.
Service of notices, s. 31.
Provisions of municipal Act as to highways to apply, s. 32.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

hort title. 1. This Act may for all purposes be cited as "*The Railway Streets and Drains Act.*" 45 V. c. 21, s. 1.

Application of Act.

2. This Act and the respective provisions thereof apply to every railway and railway company in respect of which the Legislature of Ontario has authority to enact such provisions. 45 V. c. 21, s. 2.

Interpretation.

3. Where the following words occur in this Act, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:

1. "Railway Company" shall include the owner or lessee of any railway, and the contractor working or operating the same;

2. "Council" and "Municipality" shall respectively have the meaning assigned to them by *The Municipal Act*; Rev. Stat. c. 184.

3. "The Railway" shall have the meaning assigned thereto by *The Railway Act of Ontario*; Rev. Stat. c. 170.

4. "Highway" shall mean and include any public highway, road, street, lane, or way;

5. "Notice" shall mean a notice either wholly written or printed, or partly written and partly printed. 45 V. c. 21, s. 3.

Power to pass by-laws for making, etc., roads, etc.

4. The council of any municipality may pass by-laws for establishing, opening, making, preserving, improving, maintaining, widening, enlarging, altering, diverting, or stopping-up within the limits of the municipality, any highway or public drain through, over, across, under, along, or upon the railway and lands of any railway company, and for entering upon, breaking up, taking, or using such land in any way necessary and convenient for the said purposes; but subject to such terms and restrictions as are in this Act contained; and provided always that such highway or drain is, under the provisions of *The Municipal Act*, within the jurisdiction of such council. 45 V. c. 21, s. 4. Rev. Stat. c. 184.

And for laying down water mains on railway lands.

5. The council of any municipality may also pass by-laws for laying down in, through, across, under, or along the railway and lands of any railway company, any main pipe belonging or necessary to any water-works which the corporation of the municipality is authorized to construct, and for entering upon, breaking up, taking or using any such land in any way necessary or convenient for the said purpose, but subject to the terms and restrictions in this Act contained. 45 V. c. 21, s. 5.

Plans to be prepared and notice given to company.

6. Before the final passing of any such by-law, the council shall procure plans and estimates in detail, with proper specifications of the work intended to be carried out under such proposed by-law, copies whereof, with notice of the proposed by-law, shall be given to and served upon the railway company whose railway or lands are to be affected or entered upon. 45 V. c. 21, s. 6.

Requisites of plans, etc., in case of opening, etc., a highway which is not to be carried over or under railway.

7. Where it is intended by such by-law to authorize the opening, widening, altering, enlarging, or diverting, of a highway without the same being carried over the railway by a bridge, or under, by a subway or tunnel, such plans specifications and estimates shall, amongst other things, provide for such of the following matters as in the opinion of the council are necessary in connection with such opening, widening, altering, enlarging or diverting of such highway, that is to say :

1. Planking to be laid on either side and between the rails of the track of the railway, so as to permit of the same being easily crossed at any place within the travelled width of such highway, and so as that the upper level of the said planking shall be, as nearly as practicable, level with the top of the said rails;

2. The construction of a cattle guard at each side of the highway where it crosses the railway, suitable and sufficient to prevent cattle and animals from getting on the railway;

3. The erection of fences upon the sides of such highway from the line of the fences on each side of the railway up to the cattle guards, and of the height and strength of an ordinary division fence;

Rev. Stat. c. 170.

4. The erection of such sign boards as will be a compliance with sub-section 4 of section 29 of *The Railway Act of Ontario*. 45 V. c. 21, s. 7.

Plans, etc., for drains or water pipes.

8. Where the work intended to be carried out under any such by-law is in respect of a drain or water pipe, the plans and specifications shall, amongst other things, shew the location of the drain or water pipe relatively to the railway, and shall also, where such work is in respect of a drain, shew where an outlet is to be obtained, and the estimated maximum discharge and flow of water and sewage. 45 V. c. 21, s. 8.

Where no objection made within thirty days from service of notice council may proceed with work.

9. If the railway company within thirty days after the day of the service of the copies and notice required to be served upon such railway company by section 6 of this Act, does not give to the council notice stating that the work intended to be carried out under the proposed by-law is objected to by the railway company, and further stating the grounds of objection, the council may proceed with the work agreeably to the said plans and specifications, but subject to the provisions of *The Municipal Act.* 45 V. c. 21, s. 9. Rev. Stat. c. 184.

Where work is in respect of a highway, company may do work.

10. Where the work intended to be carried out under such by-law is in respect of a highway, and the railway company, within the said thirty days, gives notice to the council that the railway company will itself execute the proposed work at and for the amount estimated therefor as aforesaid, the railway company shall forthwith proceed with and execute the proposed work in accordance with the said plans and specifications, and shall be entitled to receive payment therefor from the municipality, according to the said estimate. 45 V. c. 21, s. 10.

Council and company may agree as to the mode of making road, etc.

11. The council and the railway company may mutually agree as to the point, mode and manner at or by which any such highway or public drain shall be so established, opened, made, improved, maintained, widened, enlarged, altered, diverted, or stopped up, or such water pipe laid down, as the case may be, in, through, over, across, under, along or upon the railway or lands of the railway company, or as to how far or to what extent the council, in the exercise of the powers by this Act conferred, shall be at liberty to enter upon, take, or use said railway or lands; but in case they do not so mutually agree, then no council shall avail itself of, or exercise, any of the powers by sections 4 or 5 of this Act conferred unless and until and only so far as the approval of the Commissioner of Public Works is first had and obtained in that behalf, upon application made to the Commissioner by or on behalf of the said council; of which application notice shall, before the same is so made, be given by the council to the railway company. 45 V. c. 21, s. 11.

If no agreement, approval of commissioner of public works to be obtained.

Application by council to commissioner in case of disagreement.

12. In case the railway company gives notice as aforesaid, that the proposed work, or the intended mode and manner of its construction or carrying out is objected to, and the council and the railway company have not mutually agreed as in the last preceding section provided, the council may make

application to the Commissioner of Public Works as provided in the last preceding section, and shall thereupon transmit to the Commissioner verified copies of all papers served by the council upon the railway company, or by the latter upon the council. 45 V. c. 21, s. 12.

Execution of work if approved.

13. If the Commissioner of Public Works shall approve of and concur in the propriety of the proposed work being executed according to said plans and specifications, or according to some modification thereof, the same may be executed accordingly. 45 V. c. 21, s. 13.

Commissioner may require examination and report.

14. The Commissioner of Public Works, before disposing of the matter, may, if he thinks fit, direct the inspector of railways, or some other competent person, to examine the locality and make his report in regard to any matters which the Commissioner may direct. 45 V. c. 21, s. 14.

Payment of expenses of application.

15. All expenses of and incidental to such application to the Commissioner of Public Works, whether of the inspection, or of the parties, or otherwise, shall be paid by the municipality or the railway company, as the Commissioner may direct, and the Commissioner may assess and determine the amount to be so paid, and to whom, or may direct that the same shall be, in whole or in part, ascertained by one of the taxing officers of the Supreme Court of Judicature, subject to such directions (if any) as the Commissioner may give. 45 V. c. 21, s. 15.

Certificate of commissioner to be final.

16. The decision or certificate of the Commissioner of Public Works shall be final, according to the tenor and effect thereof; and it shall not be open to either or any party, after such decision or certificate is made, to raise any question as to the regularity or sufficiency of any of the prior proceedings directed by this Act or otherwise. 45 V. c. 21, s. 16.

Where work is in respect of a highway, and plans, etc., are approved, company may execute work

17. Where the proposed work is in respect of a highway, and, upon being applied to as aforesaid, the Commissioner of Public Works approves of plans and specifications therefor as aforesaid, the railway company may, within ten days of being served with notice of his decision, serve a notice upon the council that the railway company will perform the work for the price named in the estimate therefor, and the railway company shall thereupon proceed with and execute the said proposed work. 45 V. c. 21, s. 17.

Where plans are modified company may do work at price fixed.

18. Where the proposed work is in respect of a highway, and the Commissioner of Public Works upon being applied to as aforesaid, modifies the plans or specifications therefor, he may, with the consent of the council of the municipality, fix a price to be paid for such work, or if he does not, then the council shall cause an estimate of the cost thereof to be served upon the railway company with a notice that the council is willing to pay such estimated cost for the work, and the railway company may, within ten days of being notified of the amount so fixed, or of such last mentioned estimate of cost, serve a notice upon the council that the railway company will perform the work for the price or cost so fixed or estimated as aforesaid (as the case may be) and the railway company shall thereupon proceed with and execute the work. 45. V. c. 21, s. 18.

If company does not use reasonable diligence council may proceed with work, or may obtain a mandamus to compel company to proceed.

19. Where any railway company elects as aforesaid to proceed with the execution of any work under the provisions of this Act, and does not proceed therewith with reasonable diligence, the council of the municipality may take the same out of the hands of the railway company and itself do what is necessary to perform or complete the required work, or may apply for a *mandamus* to compel the railway company to proceed therewith and complete the same; and when the railway company does not elect in manner hereinbefore provided to do the work, the council of the municipality may proceed with the work and execute the same. 45 V. c. 21, s. 19.

Compensation to company for lands taken or injuriously affected.

20. Where, in the exercise of the powers by this Act conferred, the lands of any railway company are either entered upon, taken or used by any council, or are injuriously affected, the council shall make to the railway company due compensation for any damages (including cost of fencing when required) necessarily resulting from such exercise of such powers, beyond any advantage which the railway company may derive therefrom; provided always, that where the damages result from the exercise of any power by this Act conferred in respect of a highway, the compensation shall not exceed one-half the value of the lands taken or affected under or by the exercise of the power; and that where the damages result from the exercise of any such power in respect of a public drain, the compensation shall only be required to be so made where the drain is not a covered drain carried under the railway and below the level thereof

to at least a depth of five feet, and the compensation to be made in such case shall not exceed the value of the lands taken or affected under or by the exercise of any such power. 45 V. c. 21, s. 20.

Compensation to be determined by arbitration in case of disagreement. Rev. Stat. c. 184.

21. The council and the railway company may mutually agree upon the amount of compensation to be made as aforesaid; but in case the amount of the compensation be not so mutually agreed upon, then the same shall be determined by arbitration, under the provisions of *The Municipal Act.* 45 V. c. 21, s. 21.

Claim by company for extra compensation.

22. If the railway company claims that the proposed work will injure the railway company beyond the amount of the compensation so to be made as aforesaid, the railway company shall, in the notice given under section 12 of this Act, state its claim, or if the railway company does not object to the work, but claims that injury will be done it as aforesaid, the railway company shall give, in like manner, a notice of such claim: and in case the Commissioner of Public Works shall be of opinion that the railway company is entitled to additional compensation in that behalf, he may direct that the same shall be determined by arbitration under *The Municipal Act*; and the amount of such additional compensation (if any), when so determined, shall be paid by the municipality to the railway company. 45 V. c. 21, s. 22.

Rev. Stat. c. 184.

When council may finally pass by-law.

23. No council shall finally pass any such by-law unless and until, and only so far as the work to be carried out thereunder has not been objected to by the railway company within the time fixed therefor by sections 9 and 12 of this Act, or being so objected to, has either been approved of and concurred in by the Commissioner of Public Works, or has been mutually agreed upon between the council and the railway company under the provisions of this Act. 45 V. c. 21, s. 23.

Company to repair street crossings and municipality to repair drains and water pipes.

24. All street crossings constructed under this Act shall thereafter be kept in proper repair by the railway company, and all drains constructed and water pipes laid down under this Act shall thereafter be kept in proper repair and condition by the municipality, or in case of default then by the railway company, and the railway company shall have the right to recover from the municipality the cost of all reasonable and necessary repairs made by the railway company as aforesaid. 45 V. c. 21, s. 24.

Council to maintain highways at a proper level where they approach or adjoin railway.

25. Where such highway crosses or is intended to cross the railway of a railway company, without being carried over by a bridge or under by a tunnel, it shall be the exclusive duty of the council having jurisdiction over the same, to at all times establish, keep and maintain such street and highway so that the level of the same, where it approaches and adjoins the railway, shall, for a safe and reasonable distance, not rise above or sink below the railway more than one inch; and, subject to the provisions of the preceding section, it shall be the exclusive duty of the company so to keep and maintain that part of its railway so crossed by said street or highway, that it shall not rise above or sink below the said level of the said highway more than one inch. 45 V. c. 21, s. 25.

Company to maintain railway at a proper level at street crossings.

Council not to do any unnecessary damages to railway.

26. No council in the carrying out of any work by this Act authorized shall commit any unnecessary damage or injury to or upon the railway or lands of any railway company, or unnecessarily or unreasonably impede or interfere with the traffic on or over such railway. 45 V. c. 21, s. 26.

Highways opened under this Act to be subject to Rev. Stat. c. 170.

27. Whenever and so long as any highway is established and opened for public use under the provisions of this Act, it shall be subject to the provisions of *The Railway Act of Ontario*, except in so far as may be otherwise provided by this Act. 45 V. c. 21, s. 27.

Rights of railway not affected more than necessary.

28. Subject to and except so far as may be necessary to carry out the provisions of this Act, and to allow of the full and free exercise of the powers hereby conferred, the rights of any railway company in the soil of any lands entered upon, taken or used under the powers contained in this Act shall not be disturbed or affected. 45 V. c. 21, s. 28.

Act to apply to commissioners for construction of water-works.

29. Any commissioners authorized to construct any water-works may, in respect of such water-works, exercise and have all the power, liberties and privileges by this Act given to or conferred upon any council in respect of the laying down of any water pipe as aforesaid, but always subject to and under and with the terms, restrictions, conditions, liabilities, duties and obligations in that behalf imposed by this Act upon such council. 45 V. c. 21, s. 29.

Powers as to water-works in special

30. Where by any private or special Act heretofore passed, power is given to any council or municipal corporation, or to

Acts to be subject to this Act.

any water-works commissioners to carry water pipes belonging to or forming part of any water-works, in, upon, over, under, through or along the lands or railway of any railway company, such power shall only be hereafter exercised subject to the terms, restrictions and conditions in this Act contained. 45 V. c. 21, s. 30.

Service of notice, how made. Rev. Stat. c. 184.

31. Service of any notice or paper required to be given or served, either by this Act or with respect to any arbitration as aforesaid under *The Municipal Act*, or of any proceedings therein or thereunder, may be made as follows:

1. In the case of a company, either by delivering the notice or paper to the president, vice-president, managing director, general manager, secretary or superintendent of the company, or by mailing the same, prepaid and registered, addressed to any such officer at the principal office or station of the company in Ontario;

2. In the case of a lessee of, or a contractor, working or operating a railway, either by delivering the notice or paper to the lessee or contractor, or by mailing the same, prepaid and registered, addressed to him at the principal office or station on said railway within Ontario;

3. In the case of a council, either by delivering the notice or paper to the head or clerk of the council, or by mailing the same, prepaid and registered, addressed to the said clerk at his proper post-office address;

4. In the case of commissioners, either by delivering the notice or paper to the chairman or secretary of the commissioners, or by mailing the same, prepaid and registered, addressed to said chairman or secretary, at his proper post-office address. 45 V. c. 21, s. 31.

Provisions of Rev. Stat. c. 184 relating to powers of council as to highways to apply.

32. Where not inconsistent with this Act, all the provisions of *The Municipal Act* relating to the powers, liabilities and duties of a council as to public highways, shall apply to any highway established or opened, or intended to be established or opened, under the powers conferred by this Act. 45 V. c. 21, s. 32.

R. S. O. cap. 200.

An Act to authorize and regulate the Use of Traction Engines on Highways.

TRACTION ENGINES MAY BE USED ON HIGHWAYS, S. 1.
CONDITIONS:
Weight of engine, s. 2.
Speed, s. 3.
Width of wheels, s. 4.
Meeting and passing, ss. 5, 6.
Lights to be carried, s. 7.
In cities and towns, s. 8.
EXCLUSION FROM CERTAIN STREETS IN CITIES AND TOWNS, S. 9.
BRIDGES ON NON-TOLL ROADS TO BE STRENGTHENED, S. 10.
PROVISIONS AS TO TOLL ROADS:
Notice to gate-keepers, s. 11.
Bridges to be strengthened, ss. 12, 13.
Tolls, ss. 14, 15.
PENALTIES, SS. 16-19.
RECOVERY OF DAMAGES, S. 20.
REV. STAT. c. 159, s. 2, MADE APPLICABLE TO TRACTION ENGINE COS., S. 21.

HER MAJESTY, by and with the advice and consent of the Legislative Assemby of the Province of Ontario, enacts as follows:—

Traction engines on highways.

1. It shall be lawful for any person to employ traction engines (*a*) for the conveyance of freight and passengers, or both, over any public highway in this Province, subject to the provisions hereinafter contained. R. S. O. 1877, c. 186, s. 1.

GENERAL CONDITIONS.

Weight.

2. No traction engine, so employed, shall exceed in weight twenty tons. R. S. O. 1877, c. 186, s. 2.

Speed.

3. The speed of any traction engine shall at no time exceed the rate of six miles per hour, and in cities, towns, and incorporated villages, the rate of three miles per hour. R. S. O. 1877, c. 186, s. 3.

Width of wheels.

4. The width of the driving wheels of all such engines shall be at least twelve inches, and the wheels of the trucks or

(*a*) As to the meaning of the words "traction engines." See *County of York* v. *Toronto Gravel Road and Concrete Co.*, 11 A. R. 765; 12 S. C. R. 517. See also *Parkyns* v. *Preist*, 7 Q. B. D. 313.

waggons drawn thereby shall be four inches in width for the first two tons capacity, load and weight of truck included, and an additional half inch for each further ton. R. S. O. 1877, c. 186, s. 4.

Rev. Stat. c. 195 applicable.

5. The provisions of *The Act to regulate Travelling on Public Highways and Bridges* shall be applicable to the running of any traction engine upon the highway. R. S. O. 1877, c. 186, s. 5.

Horsemen or vehicles meeting or passing engine to stop.

6. In case of any difficulty, or the prospect of any difficulty in the meeting or passing of an engine upon the highway by any mounted horseman or vehicle, it shall be the duty of the engine driver to stop the engine, and in every reasonable way to assist such mounted horseman, or the person in charge of such vehicle, to pass the engine. R. S. O. 1877, c. 186, s. 6.

Lights to be carried after dark.

7. Every engine run after dark shall carry a bright red light in a conspicuous place in front, and a green light on the rear of the train. R. S. O. 1877, c. 186, s. 7.

IN CITIES AND TOWNS.

Running through a city, town, etc.

8. No engine shall be run through a city, town, or village, unless a messenger is sent at least fifteen and not more than thirty rods in advance, carrying a red flag by day, and a bright red light by night. R. S. O. 1877, c. 186, s. 8.

Traction engines may be excluded from certain streets, but not entirely from passing through a municipality.

9. In case the municipal corporation of any city or town deems it necessary to exclude traction engines from the right to pass through any particular street or streets within the municipality, it shall be lawful for such corporation to apply to the Judge of the County Court of the county within which the municipality is situated, and such Judge shall direct notice to be given to the owner of the engine, and upon the return of such notice may, in his discretion, make or refuse an order to prevent or regulate the running of engines upon certain streets : but it shall not be lawful under this section so to exclude the engines from any streets as entirely to prevent their passage through the municipality by the then existing opened streets. R. S. O. 1877, c. 186, s. 9.

BRIDGES TO BE STRENGTHENED.

Parties running engines to

10—(1) Before it shall be lawful to run such engines over any highway whereon no tolls are levied, it shall be the duty

of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used. strengthen bridges, etc.

(2) The costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. R. S. O. 1877, c. 186, s. 10. Owners of different engines to contribute.

SPECIAL PROVISIONS AS TO TOLL ROADS.

11. Before it shall be lawful to run a traction engine over any highway upon which a toll is established, it shall be the duty of the person proposing to run the same, to leave a notice in writing to that effect with the keeper of any toll-gate on such road, at least two months previous to the running of such engine, and the notice shall also contain a correct statement of the weight of the heaviest engine proposed to be used. R. S. O. 1877, c. 186, s. 11. Notice before use of toll roads.

12. The owner of such toll roads, within two months after the delivery of such notice as aforesaid, and upon receiving security to the amount of the cost of required improvements may cause all bridges and culverts upon the road to be so strengthened as, in the opinion of the county engineer of the county in which such bridge or culvert is situated, to render the same safe for the constant passing of the engines. R. S. O. 1877, c. 186, s. 12. Owners of toll roads to strengthen bridges, etc.

13—(1) In the event of the owners of such toll roads neglecting or refusing to comply with the requirements of the last preceding section, it shall be lawful for the parties about to run such engines themselves to do the necessary work at their own expense; such outlay to be repaid to them by the remission of tolls upon the passage of engines and trains through the gates upon such road, until the whole of such outlay is repaid. If they do not, owners of engines may do the work, to be reimbursed out of tolls.

(2) The works shall be performed to the satisfaction of the county engineer or other officer appointed for that purpose by the municipality within which the highway or the greater part thereof is situated. R. S. O. 1877, c. 186, s. 13. Work to be done to satisfaction of county engineer.

14. The owners of such toll roads may levy such tolls as may be imposed by them upon the passage of any engine or truck through every lawful gate; and if the owner of the Tolls. Provision for arbitration.

engine is dissatisfied with the rate of toll, the same may be referred to the decision of three arbitrators, one of whom shall be nominated by the owner of the engine, and one by the proprietors of the road, and the two so appointed shall choose a third, and the decision of the said arbitrators or the majority of them shall be binding; and in the event of the two arbitrators first appointed as aforesaid failing or neglecting within one month to appoint a third arbitrator as herein provided, then the appointment of such third arbitrator may be made by the County Judge of the county within which the said tolls are to be collected. R. S. O. 1877, c. 186, s. 14.

Collection of tolls.

15. It shall be lawful for the owners of any such road to enforce the payment of the aforesaid tolls in the manner provided by law for the collection of the ordinary tolls upon such roads. R. S. O. 1877, c. 186, s. 15.

PENALTIES.

Penalty for contravening Act.

16. If any person contravenes this Act, and such contravention is duly proved by the oath of one credible witness before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than $5, nor more more than $25, in the discretion of such Justice, with costs. R. S. O. 1877, c. 186, s. 16.

To be enforced by distress.

17. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty and costs and charges of sale, shall be returned, on demand, to the owner of the goods and chattels. R. S. O. 1877, c. 186, s. 17.

Or by imprisonment.

18. In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs, and charges are sooner paid. R. S. O. 1877, c. 186, s. 18.

Application of fines

19. Every fine collected under this Act shall be paid to the treasurer of the local municipality in which the offence was committed, and shall be applied to the general purposes thereof. R. S. O. 1877, c. 186, s. 19.

20. No fine or imprisonment under this Act shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. R. S. O. 1877, c. 186, s. 20. Recovery of damages.

21. Section 2 of *The General Road Companies Act* shall apply to companies established for manufacturing or purchasing traction engines, and working the same. R. S. O. 1877, c. 186, s. 21. Rev. Stat. c. 159, s. 2, to apply.

R. S. O. cap. 201.

An Act to encourage the Planting and Growing of Trees.

SHORT TITLE, s. 1.
PLANTING TREES ON HIGHWAYS, ss. 2, 3.
PROPERTY IN TREES, s. 3 (3, 4).
BONUS FOR TREES PLANTED ON HIGHWAYS, s. 4.
INSPECTOR, ss. 4 (2), 5.
ONTARIO TREE PLANTING FUND, ss. 6, 7.
PENALTIES, ss. 8, 9.
BY-LAWS RESPECTING TREES ON HIGHWAYS, s. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The Ontario Tree Planting Act.*" 46 V. c. 26, s. 1. Short title.

2. Section 3 of this Act shall not apply to any incorporated city, town or village, unless the council thereof first passes a by-law making the same apply thereto. 46 V. c. 26, s. 3. By-law necessary to make s. 3 apply to cities, etc.

3—(1) A person owning land adjacent to any highway, public street, lane, alley, place or square in this Province, may plant trees on the portion thereof contiguous to his land; but no tree shall be so planted that the same is or may become a nuisance in the highway or public thoroughfare, or obstruct the fair and reasonable use of the same. Planting trees.

(2) Any owner of a farm or lot of land may, with the consent of the owner or owners of adjoining lands, plant trees on the boundary lines of his farm or lot.

Property in trees.

(3) Every tree so planted on such highway, street, lane, alley, place, or square, shall be deemed to be the property of the owner of the lands adjacent to such highway, street, lane, alley, place, or square and nearest to such tree; and every such tree so planted on a boundary line aforesaid shall be deemed to be the common property of the owners of the adjoining farms or lots. 46 V. c. 26, s. 4 (1-3).

(4) Every growing tree, shrub, or sapling whatsoever planted or left standing on either side of any highway for the purposes of shade or ornament shall be deemed to be the property of the owner of the land adjacent to the highway and nearest to such tree, shrub, or sapling. 47 V. c. 36, s. 1.

Municipal councils may grant a bonus for each ash tree, etc., planted on any highway, etc.

4—(1) The council of any municipality may pass a by-law for paying out of municipal funds a bonus or premium not exceeding twenty-five cents for each and every ash, basswood, beech, birch, butternut, cedar, cherry, chestnut, elm, hickory, maple, oak, pine, sassafras, spruce, walnut, or whitewood tree, which shall, under the provisions of this Act, be planted within such municipality on any highway, or on any boundary line of farms as aforesaid, or within six feet of such boundary.

(2) Such by-law shall further provide for the appointment of an inspector of trees so planted; for their due protection against injury and against removal by any person or persons, including the owner, excepting as authority may be given therefor by special resolution of the council; for the conditions on which bonuses may be paid, and generally for such regulations as are authorized by sub-section 20 of section 479 of *The Municipal Act.* (*a*)

Rev. Stat. c. 184.

(3) Printed copies of the said by-law, together with sections 3, 4, 5, and 6, of this Act, shall be posted throughout the municipality, and all claims made to the council under the provisions of the by-law shall be referred to the inspector to obtain proof of the same and report thereon. 46 V. c. 26, s. 5.

Annual report by inspector.

5. The inspector shall make to the council one report for each year, if required so to do, giving the names of all persons entitled to any bonus or premium under the by-law, the number of trees of each species planted and the amount of

(*a*) See sec. 489, sub-s. 27, of The Municipal Act.

bonus or premium to which each person is entitled, and certifying that the distance between any one tree and the tree nearest thereto is not less than thirty feet, that the trees have been planted for a period of three years, and that they are alive, healthy, and of good form; and upon the adoption of such report the bonuses or premiums shall be paid. 46 V. c. 26, s. 6.

Provincial treasurer on receipt of report to refund to municipality half the sum paid.

6. The Treasurer of the Province, upon receiving a copy of the inspector's report, certified by the reeve and clerk, shall recoup to the treasurer of the municipality one-half of the sum paid by the municipality under the authority of this Act, the said copy to be forwarded on or before the 1st day of November in each year. 46 V. c. 26, s. 7.

Appropriation for Ontario tree planting fund.

7. The sum of $50,000 is hereby apportioned and set apart for the object of the preceding section, and shall be known as "The Ontario Tree Planting Fund." 46 V. c. 26, s. 8.

Penalties.

8—(1) Any person who ties or fastens any animal to or injures or destroys a tree planted and growing upon any road or highway, or upon any public street, lane, alley, place, or square in this Province (or upon any boundary line of farms, if any such bonus or premium as aforesaid has been paid therefor), or suffers or permits any animal in his charge to injure or destroy or who cuts down or removes any such tree without having first obtained permission so to do by special resolution of the council of the municipality, shall upon conviction thereof before a Justice of the Peace, forfeit and pay such sum of money, not exceeding $25 besides costs, as such Justice may award, and in default of payment the same may be levied of the goods and chattels of the person offending, or such person may be imprisoned in the common gaol of the county within which the municipality is situate for a period not exceeding thirty days. (*b*)

(2) One half of such fine shall go to the person laying the information, and the other half to the municipality within which such tree was growing. 46 V. c. 26, s. 9.

(*b*) The owner of land adjoining a highway has such a special property in the shade and ornamental trees growing on the highway opposite to his lands as to entitle him to maintain an action against a wrong doer to recover damages for the cutting down or destroying such trees and he is not restricted to the penalty given by this section. *Douglas* v. *Fox*, 31 U. C. C. P. 140. The Act refers to trees of natural growth as well as to those which have been planted. *Ib.*

Penalty for injuring shade or ornamental trees growing on boundary line between farms or lots.

9. Any person who ties or fastens any animal to, or injures or destroys any tree growing for the purposes of shade or ornament upon any boundary line between farms or lots or, who suffers or permits any animal in his charge to injure or destroy or who cuts down or removes any such tree, without the consent of the owner or owners of such tree, shall be subject to the like penalties and liable to be proceeded against and dealt with as provided in the preceding section. 47 V. c. 36, s. 2.

By-laws respecting trees on highways.

10. The council of every municipality may pass by-laws :

1. To regulate the planting of trees upon the public highway ;

2. To prohibit the planting upon the public highways of any species of trees which they may deem unsuited for that purpose ;

3. To provide for the removal of trees which may be planted on the public highway contrary to the provisions of any such by-law. 46 V. c. 26, s. 10.

R. S. O. cap. 202.

An Act to prevent the spread of Noxious Weeds, and of Diseases affecting Fruit Trees.

INTERPRETATION, s. 1.
DUTY OF OWNERS AND OCCUPANTS OF LAND, s. 2.
OPERATION OF ACT MAY BE EXTENDED, s. 3 (1).
EXEMPTION OF WASTE OR UNOCCUPIED LAND, s. 3 (3).
INSPECTOR :
Appointment, s. 3 (2).
Duties, s. 4.
Expenses, ss. 5-7.
Duty on special complaint, s. 8.
DUTY OF OVERSEERS OF HIGHWAYS, s. 9.
PENALTIES, ss. 10, 11.
COUNCILS TO ENFORCE ACT, s. 12.

HER MAJESTY, by and with the advice, and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation. "Non-resident land." "Resident lands."

1. Where used in this Act the term "non-resident land" shall apply to all lands which are unoccupied, and the owner of which is not resident within the municipality, and the term "resident lands" shall apply to all lands which are occupied or which are owned by persons resident within the municipality. 47 V. c. 37, s. 13.

Duty of owners and occupants as to destruction of weeds, etc.

2. It shall be the duty of every owner of land, or the occupant thereof if the owner is not resident within the local municipality wherein the same is situate—

1. To cut down or destroy all the Canada thistles, ox-eye daisy, wild oats, rag-weed, and burdock growing on his land, and all other noxious weeds growing on his land, to which this Act may be extended by by-law of the municipality, so often each and every year as is sufficient to prevent the ripening of their seed;

2. To cut out and burn all the black-knot found on plum or cherry trees on his land, so often each and every year as it shall appear on such trees; and

3. To cut down and burn any peach, nectarine, or other trees on his land infected with the disease known as the yellows, and to destroy all the fruit of trees so infected. 47 V. c. 37, s. 2.

Operation of Act may be extended.

3—(1) The council of any city, town, township, or incorporated village may, by by-law, extend the operation of this Act to any other weed or weeds, or to any other disease of fruit trees or fruit which they declare to be noxious to husbandry or gardening in the municipality; and all the provisions of this Act shall apply to such noxious weeds and diseases as if the same were herein enumerated.

Appointment of inspector.

(2) Such council may and, upon a petition of fifty or more ratepayers, shall appoint at least one inspector to enforce the provisions of this Act in the municipality, and fix the amount of remuneration, fees or charges he is to receive for the performance of his duties; and in case a vacancy shall occur in the office of inspector, it shall be the duty of the council to fill the same forthwith.

Exemption of waste or unoccupied lands.

(3) The council of any township in which there are any large tracts or blocks of waste or unoccupied land, may upon the petition of not less than thirty ratepayers, by by-law, suspend the operation of this Act, in respect of such waste

or unoccupied lands; the by-law to define with sufficient clearness the tracts or blocks of land so exempted; such by-law to remain in force until repealed by such council; and until repealed the lands therein described shall be exempt from the operation of this Act. 47 V. c. 37, s. 3.

Duty of inspector.

4—(1) It shall be the duty of the inspector to give or cause to be given notice in writing to the owner or occupant of any land within the municipality whereon the said noxious weeds are growing and in danger of going to seed (and in the case of property of a railway company, the notice shall be given to any station master of the company resident in or nearest to the municipality), requiring him to cause the same to be cut down or destroyed within ten days from the service of the notice; and it shall be the duty of the inspector to give or cause to be given such notice for the first time not later than the 10th day of July in each year, or such other earlier date as may be fixed by by-law of the municipality.

(2) In case such owner or occupant of land (or, if it be railway property, then the station master upon whom notice has been served) refuses or neglects to cut down or destroy all or any of the said noxious weeds within the period aforesaid, the inspector shall enter upon the land and cause such weeds to be cut down or destroyed with as little damage to growing crops as may be, and he shall not be liable to be sued therefor; or the inspector, instead of entering upon the land and causing such weeds to be cut down or destroyed, may lay information before any Justice of the Peace as to such refusal or neglect, and such owner or occupant shall, upon conviction, be liable to the penalties imposed by section 10 of this Act.

(3) But no inspector shall have power to cut down or destroy noxious weeds on any land sown with grain; and where such noxious weeds are growing upon non-resident lands it shall not be necessary to give any notice before proceeding to cut down or destroy the same. 47 V. c. 37, s. 4.

Account of inspector's expenses and payment thereof.

5—(1) The inspector shall keep an accurate account of the expense incurred by him in carrying out the provisions of the preceding sections of this Act with respect to each parcel of land entered upon therefor, and shall deliver a statement of such expenses, describing the land entered upon and verified by oath, to the owner or occupant of resident lands, requiring him to pay the amount.

(2) If any owner or occupant of land amenable under the provisions of this Act deems such expense excessive, an appeal may be had to the said council (if made within thirty days after the delivery of such statement), and the said council shall determine the matter in dispute.

(3) In case the owner or occupant of resident lands refuses or neglects to pay the same within thirty days after such request for payment, the said claim shall be presented to the council of the municipality in which such expense was incurred, and the said council is hereby authorized and required to audit and allow such claim, and order the same to be paid from the fund for general purposes of the said municipality. 47 V. c. 37, s. 5.

Provisions as to expenses in case of non-resident land.

6. The inspector shall also present to the said council a similar statement, verified by oath, of the expenses incurred by him in carrying out the provisions of this Act upon any non-resident lands; and the council is hereby authorized and required to audit and allow the same, or so much thereof as to the council may seem just, and to pay so much thereof as has been so allowed. 47 V. c. 37, s. 7.

Collection of sums paid for expenses by municipality.

7. The council of the municipality shall cause all such sums as have been so allowed and paid by the council under the provisions of this Act to be by the clerk severally placed upon the collector's roll of the municipality against the lands described in the statement of the inspector, and to be collected in the same manner as other taxes imposed by by-laws of the municipality. 47 V. c. 37, s. 7.

Duty of inspector on special complaint.

8. If written complaint be made to the inspector that yellows or black-knot exist within the municipality, in any locality described in such complaint, with reasonable certainty, he shall proceed to examine the fruit trees in such locality, and if satisfied of the presence of either disease he shall immediately give notice in writing to the owner or occupant of the land whereon the affected trees are growing, requiring him within five days from the receipt of the notice to deal with such trees in the manner provided by section 2 of this Act. 47 V. c. 37, s. 9.

Duty of overseers of highways.

9. It shall be the duty of the overseers of highways in any municipality to see that the provisions of this Act relating to noxious weeds are carried out within their respective highway divisions by cutting down or destroying

or causing to be cut down or destroyed at the proper times to prevent the ripening of their seed, all the noxious weeds growing on the highways or road allowances within their respective divisions; such work to be performed as part of the ordinary statute labour, or to be paid for at a reasonable rate by the treasurer of the municipality, as the council of the municipality may direct. 47 V. c. 37, s. 8.

Penalties.

10—(1) Any owner or occupant of land who refuses or neglects to cut down or destroy any of the said noxious weeds after notice given by the inspector, as provided by section 4, or who knowingly suffers any of the said noxious weeds to grow thereon, and the seed to ripen so as to cause or endanger the spread thereof, or who suffers any black-knot to remain on plum or cherry trees, or keeps, any peach, nectarine or other trees infected with yellows or the fruit of trees so infected, shall upon conviction be liable to a fine of not less than $5 nor more than $20 for every such offence.

(2) Any person who knowingly sells or offers to sell any grass, clover, or other seed, or any seed grain among which there is seed of Canada thistles, ox-eye daisy, wild-oats, rag-weed, burdock, or wild mustard shall, for every such offence, upon conviction, be liable to a fine of not less than $5 nor more than $20.

(3) Any person who knowingly offers for sale or shipment or sells or ships the fruit of trees infected with yellows shall, upon conviction, be liable to a fine of not less than $5 nor more than $20.

(4) Every inspector, overseer of highways, or other officer, who refuses or neglects to discharge the duties imposed on him by this Act shall, upon conviction, be liable to a fine of not less than $10 nor more than $20. 47 V. c. 37, s. 10.

Recovery and application of penalties.

11. Every offence against the provisions of this Act shall be punished and the penalty imposed for each offence shall be recovered and levied, on summary conviction, before any Justice of the Peace; and all fines imposed shall be paid to the treasurer of the municipality in which the offence is committed, for the use of the municipality. 47 V. c. 37, s. 11.

Municipalities to require officers to enforce Act.

12. The council of every municipality in Ontario shall require its inspector, overseer of highways and other officers to faithfully discharge all their duties under this Act. 47 V. c. 37, s. 12.

R. S. O. cap. 204.

An Act to prevent Minors frequenting Billiard Rooms and other Places.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Fine on first and subsequent offence; how recoverable; one-half to informer.

1. The keeper of a licensed billiard, pool or bagatelle room, who directly or indirectly keeps the same for hire or gain, admitting a minor under the age of sixteen years thereto, or allowing him to remain therein, without the consent of his parent or guardian, shall be subject to a fine of not exceeding $10, for the first, and not exceeding $20 for each subsequent offence, to be imposed by any Justice of the Peace, one-half of which fine shall go to the informer; provided always that this Act shall not apply to a minor who is a member of the family of the keeper or his servant, or who does not go to the billiard, pool, or bagatelle room for the purpose of loitering, or to play billiards, pool, or bagatelle therein; nor shall this Act apply to any case where the keeper, in the opinion of the Justice of the Peace, had reasonable cause to believe that such consent had been given by the parent or guardian, or that such minor was not under the age of sixteen. 49 V. c. 41, s. 1.

Proviso.

R. S. O. cap. 205.

An Act respecting the Public Health.

SHORT TITLE, s. 1.
INTERPRETATION, s. 2.
PROVINCIAL BOARD OF HEALTH :
- Board continued, s. 3.
- Salaries and allowances, ss. 4, 5, 7.
- Secretary, ss. 5, 6.
- Meetings of board, s. 8.
- Duties of board, ss. 9-12.
- Regulations of board, ss. 13-21.

ACQUIRING LAND, ss. 22-27.
- Limitation as to use of land, s. 28.

DEFAULT OF LOCAL AUTHORITY, s. 29.
PLANS OF WATER SUPPLY AND SEWERAGE TO BE SUBMITTED TO PROVINCIAL BOARD, s. 30.
HEALTH OFFICERS :
- Appointment, ss. 31, 32, 34, 35.
- Duration of office, s. 33.
- Compensation, ss. 33, 36.
- Powers, ss. 37, 66-70.

SUSPENSION OF ELECTIONS, s. 38.
LOCAL BOARDS OF HEALTH :
- Organization, ss. 39-47.
- Powers and duties, ss. 48-53.

NUISANCES :
- Inspection of slaughter-houses, ss. 54, 65.
- Regulation of ice supplies, s. 55.
- Inspection of health districts, s. 56.
- Powers of medical health officer, s. 57.
- Information and investigation, respecting, ss. 58, 59.
- Local board to give notice requiring abatement of nuisances, s. 60.
- Power where nuisance due to cause outside of district, s. 61.
- Costs and expenses, s. 62.
- Restriction on establishment of offensive trades, s. 63.
- Provision where abatement of nuisance involves considerations of difficulty, s. 64.
- Inspection of dairies, creameries and dairy farms, s. 65.
- Power to examine and cleanse premises, ss. 66, 67,
- Disposal of refuse, s. 71.
- Recovery of expense of abating, s. 104.
- When application to abate nuisance must be made to High Court, s. 105.

EXAMINATION OF HOUSE, ETC., BY MEDICAL PRACTITIONERS, s. 68.
REMOVAL BY HEALTH OFFICERS OF INHABITANTS OF A HOUSE, s. 69.
PROVISIONS AGAINST INFECTION, ss. 72-94.
HOSPITALS, ss. 95-98.
INSPECTION OF FOOD, ss. 99, 100.
ENFORCING OBEDIENCE TO ORDERS, ss. 101, 102.
APPEAL TO COUNTY JUDGE, s. 103.
PENALTIES, ss. 100, 106-111.
PROCEEDINGS NOT TO BE QUASHED FOR WANT OF FORM, OR REMOVED BY CERTIORARI, s. 112.
BY-LAWS APPLICABLE TO ALL MUNICIPALITIES, s. 113.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title. 1. This Act may be cited as "*The Public Health Act.*" 47 V. c. 38, s. 1.

2. Where the following words occur in this Act, or the schedules thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears: Interpretation.

1. "Owner" means the person for the time being receiving the rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee of any other person, or who would so receive the same if such lands and premises were let; "Owner."

2. "Health District" or "District" means any local municipality, or union of local municipalities, under the jurisdiction of a Local or District Board of Health, and "Local Board" or "Board" shall include a District Board; "Health district," "District." "Local board," and "Board."

3. "House" includes schools, factories, and other buildings, huts and tents used for human habitation or work, whether such use is permanent or temporary, and whether the same are stationary or movable; "House."

4. "Street" shall include every highway, road, square, row, lane, mews, court, alley, and passage, whether a thoroughfare or not. 47 V. c. 38, s. 2. "Street."

PROVINCIAL BOARD OF HEALTH.

Organization—Powers and Duties.

3. The provincial board of health of Ontario at present existing, is hereby continued and shall consist of not more than seven members one of whom may be the secretary of the board; the members thereof shall be appointed by the Lieutenant-Governor in Council from time to time for a period of three years, and any retiring member shall be eligible for re-appointment; at least four members of the board shall be duly registered medical practitioners. 45 V. c. 29, s. 1. Provincial board of health continued.

4. The chairman of the board shall be appointed by the Lieutenant-Governor in Council, and shall be paid an annual salary not exceeding the sum of $400 per annum; other members of the board, except the secretary, shall be paid such per diem allowance while attending meetings of the board, or any committee thereof, as may be voted by the Legislature and approved by the Lieutenant Governor in Council, together with actual travelling and other necessary expenses while employed on the business of the board. 50 V. c. 34, s. 7. Salaries and allowance of chairman and members of the board.

Appointment of secretary.

5. The Lieutenant-Governor in Council may appoint a competent and suitable person as secretary of the board, who shall hold office during pleasure, and who may be paid an annual salary not exceeding $1,750 per annum, and who shall be the chief health officer of the Province. 45 V. c. 29, s. 7; 50 V. c. 34, s. 8.

Duties of secretary.

6. The secretary shall keep his office at Toronto, and perform the duties prescribed by this Act or required by the board; he shall keep a record of the transactions of the board and shall, so far as practicable, communicate with other provincial or state boards of health, and with the local boards of health, and health officers within the Province, and with municipal councils and other public bodies, for the purpose of acquiring or disseminating information concerning the public health; and he shall also use such means as are practicable to induce municipal councils to appoint health officers or local boards of health within their municipality; he shall also assist in preparing the annual report of the registrar-general in relation to the vital statistics of the Province, (*a*) and shall perform such other duties and functions relating to vital statistics and otherwise as may be assigned to him by the Lieutenant-Governor in Council. 45 V. c. 29, s. 8.

Payment of salaries and expenses.

7. The expenses of the said provincial board and the salaries of the chairman and secretary shall be paid out of such moneys as may, from time to time, be appropriated by the Legislature for that purpose. 45 V. c. 29, s. 21; 47 V. c. 38, s. 8.

Meetings of board.

8. The board shall meet quarterly at Toronto, and at such other places and times as may be fixed under a resolution of the board. Three members shall be a quorum for the transaction of business, and they shall have power to make and adopt rules and by-laws regulating the transaction of its business, and may provide therein for the appointment of committees, to whom they may delegate authority and power for the work committed to them. 45 V. c. 29, s. 5; 47 V. c. 38, s. 10.

Duties of board.

9. The provincial board of health shall take cognizance of the interests of health and life among the people of the

(*a*) See Rev Stat. c. 40, sec. 24 and sec. 496, sub-s. 8 of the Municipal Act.

Province; they shall especially study the vital statistics of the Province, and shall endeavour to make an intelligent and profitable use of the collected records of deaths and of sickness among the people; they shall make sanitary investigations and inquiries respecting causes of disease, and especially of epidemics; the causes of mortality and the effects of localities, employments, conditions, habits, and other circumstances upon the health of the people; they shall make such suggestions as to the prevention and introduction of contagious and infectious diseases, as they shall deem most effective and proper, and as will prevent and limit as far as possible the rise and spread of disease; they shall enquire into the measures which are being taken by local boards for the limitation of any existing dangerous, contagious or infectious disease, through powers conferred upon said local boards by any Public Health Act, and should it appear that no efficient measures are being taken and that the said powers are not being enforced, it shall be competent for the provincial board, in the interests of the public health, to require the local board to exercise and enforce any of the said powers which, in the opinion of the provincial board, the urgency of the case demands; and in any such case where the local board, after request by the provincial board, neglect or refuse to exercise their powers, the provincial board may, with the approval of the Minister of the department under which the board is for the time being acting, exercise and enforce at the expense of the municipality any of the powers of local boards which under the circumstances they may consider necessary, and they shall, when required or when they deem it best, advise officers of the Government and local boards of health in regard to the public health, and as to the means to be adopted to secure the same, and as to location, drainage, water supply, disposal of excreta, heating and ventilation of any public institution or building. 45 V. c. 29, s. 3; 50 V. c. 34, s. 6.

Information to be published.

10. The board shall from time to time, and especially during the prevalence in any part of the Province of epidemic, endemic or contagious disease, make public distribution of such sanitary literature, and of special practical information relating to the prevention and spread of contagious and infectious diseases through the medium of the public press, and by circular to local boards of health and health officers, municipal councils, and in and through

the public schools and otherwise as shall be deemed by them in the interest of the public health. 45 V. c. 29, s. 4.

Investigations as to causes of contagious or other disease.

11. With the concurrence of that member of the Executive Council to whose department the provincial board of health is for the time being assigned by the Lieutenant-Governor in Council, the board may send its secretary, or any member or members of the board, to any part of the Province when deemed necessary to investigate the cause or causes of any contagious or other disease or mortality; and at such investigation evidence may be taken on oath or otherwise as the said secretary, member or members may deem expedient; and in such case the secretary, or any member of the board present at the investigation, may administer the oath; and the said investigating committee shall have power, by warrant under the hand and seal of any one of its members, to call upon any person to give evidence regarding any matter in question in the investigation; and the investigating committee shall have all the powers which may be conferred upon commissioners under *The Act respecting Inquiries concerning Public Matters.* 47 V. c. 38, s. 11.

Rev. Stat. c. 17.

Supply of vaccine matter.

12. It shall be the duty of the provincial board of health to see that a supply of proper vaccine matter is obtainable at all times at such vaccine farms and other places as are subject to inspection by the board. (*b*) 50 V. c. 34, s. 9.

Powers of Provincial board to make regulations for prevention or mitigation of disease.

13. Whenever this Province, or any part thereof or place therein appears to be threatened with any formidable epidemic, endemic, or contagious disease, the provincial board of health may, subject to the approval of the Lieutenant-Governor in Council, issue such regulations as the board deems necessary, for the prevention, as far as possible, or the mitigation of disease, (*c*) and may make, renew or alter any

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(*b*) See also R. S. O. c. 206.

(*c*) It is indictable to bring a glandered horse into a public place to the danger of infecting the people there. *Reg.* v. *Henson*, 1 Dears. C. C. 24. So it is indictable needlessly to expose in a public street a child afflicted with small pox. *Rex* v. *Vantandillo*, 4 Man. & S. 73; *Rex* v. *Burnett*, *Ib.* 272. But a person sick, even with a contagious disease, at his own house or at an hotel, is not a nuisance. *Boone* v. *Utica*, 2 Barb. (N.Y.) 104. A medical man who sends a patient suffering from an infectious disease to a fever hospital directing him to walk in the middle of the road, and not to talk to anybody, is not liable to prosecution. *Tunbridge Wells Local Board* v. *Bis-*

such regulations, or substitute new regulations ; and the said board may, by such regulations, provide :

1. For the frequent and effectual cleansing of the streets, yards, and out-houses, by the local health authorities, or by the owners or occupiers of houses and tenements adjoining thereto ;

2. For the removal of nuisances ; (*d*)

3. For the cleansing, purifying, ventilating and disinfecting of houses, (*e*) churches, buildings, and places of assembly, railway stations, steamboats, railway carriages and cars, as well as other public conveyances (*f*) by the owners and occupiers, and persons having the care and ordering thereof;

4. For regulating, so far as this Legislature has jurisdiction in this behalf, with a view of preventing the spread of infectious disease, the entry or departure of boats or vessels at the different ports or places in Ontario, and the landing of passengers or cargoes from such boats or vessels, or from railroad carriages or cars, and the receiving passengers or cargoes on board of the same ;

5. For the safe and speedy interment of the dead, (*g*) and the conduct of funerals, with a view of preventing the spread of infectious diseases as aforesaid ;

6. For supplying medical aid and accommodation, and medicine, and such other articles as may be deemed necessary for mitigating such epidemic, endemic, or contagious disease ;

7. For house to house visitation ;

8. For preventing or mitigating such epidemic, endemic or contagious disease in such other manner as to the said provincial board seems expedient ; 47 V. c. 38, s. 3.

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shopp, 2 C. P. D. 187. Where the health officer of a city requested the plaintiff, a passer-by, to assist in the removal of a coffin which he did, not knowing that the coffin contained the body of a person who had died of small-pox, and the passer-by in consequence caught the disease and communicated it to his children, who died thereby, plaintiff was held to be without remedy against the municipality. *Ogg* v. *The City of Lansing*, 14 Am. 499. See also sec. 22.

(*d*) See sec. 54 *et seq.* of this Act and sec. 489, sub-ss. 41-46 of the Municipal Act and notes thereto.

(*e*) See secs. 69-72.

(*f*) See secs. 83, 87 and 88.

(*g*) See sec. 496, sub-s. 7 of the Municipal Act.

Inspection of railway stations, steamboats, etc.

9. For the inspection of houses, schools, churches, railway stations and other buildings, steamboats, vessels, railway carriages and cars and public conveyances by the local board or some officer, and the cleansing, purifying, and disinfecting thereof, and anything contained therein when required by such board or officer at the expense of the owner, occupier, or the person having the care and ordering thereof, and for detaining for this purpose any such steamboat, vessel, railway carriage and car or public conveyance, and anything contained therein, so long as may be necessary, and any person travelling thereby; 48 V. c. 45, s. 12, *part*; 50 V. c. 34, s. 10.

Restraining departure of persons and conveyances.

10. For preventing the departure of persons from infected localities, and for preventing persons or conveyances from passing from one locality to another, and for detaining persons or conveyances who or which have been exposed to infection, for inspection or disinfection until the danger of infection is past;

Sanitary police.

11. For requiring the appointment of sanitary police, to be paid by the municipalities in which they act, for the purpose of assisting and carrying out the health regulations in force in the municipality; 48 V. c. 45, s. 12, *part*.

Removal of persons.

12. For the removal or keeping under surveillance of persons living in infected localities. 48 V. c. 45, s. 12, *part*; 50 V. c. 34, s. 11.

Local boards to see to execution of regulations.

14. It shall be the duty of the local boards of health to superintend and see to the execution of any regulations made by the provincial board; or to execute, or aid in executing the same within their respective districts; and to do and provide all such acts, matters and things as are necessary for superintending or aiding in the execution of such regulations, or for executing the same as the case may require. 47 V. c. 38, s. 4.

Provincial board may determine extent to which regulations are to apply.

15. The provincial board of health may, by order, declare all or any of the regulations so made, to be in force within the whole or any part or parts of the district of any local board of health or any municipality, and, so far as this Legislature has jurisdiction, to apply to boats, vessels, railway carriages and cars, or other conveyances in any portion or portions of the Province. 47 V. c. 38, s. 5.

16. All orders and regulations so made shall take effect from the approval thereof, and shall be forthwith published in the *Ontario Gazette* and at least one newspaper within the district, or portion or portions of the Province, in which they shall be declared in force. 47 V. c. 38, s. 6. Publication of orders and regulations.

17. During the time that any such orders or regulations are in force in any health district as provided by the next preceding four sections of this Act, all by-laws of the local board of such district which, in any manner, conflict with any such order or regulations, shall be suspended. 47 V. c. 38, s. 7. Conflicting by-laws of local board suspended.

18. All regulations made by the provincial board of health and approved by the Lieutenant-Governor in Council, and published in the *Ontario Gazette*, on the 5th of September, 1885, are hereby declared to have been valid regulations, and in force until and unless repealed or amended. 49 V. c. 42, s. 9. Regulations confirmed.

19. All regulations made by the provincial board of health are to be laid before the Legislative Assembly, if then in session; and if not then in session, within fourteen days after the commencement of the next session.. 49 V. c. 42, s. 10. Regulations to be laid before Legislature.

20. The expenses incurred by the provincial board of health in connection with any epidemic, shall be defrayed out of any moneys appropriated by the Legislature specially for that purpose, and the expenses incurred by the said local boards of health, or by the medical health officer or sanitary police, in the execution or in superintending the execution of the regulations of the provincial board, shall be defrayed and provided for by the municipal corporations having jurisdiction over the respective places affected. 47 V. c. 38, s. 8; 48 V. c. 45, s. 13. Expenses of provincial and local boards, how defrayed.

21. The local board of health or the provincial board of health may also, from time to time, direct any prosecution or legal proceedings for, or in respect of, the wilful violation or neglect of any such regulation. 47 V. c. 38, s. 9; 48 V. c. 45, s. 14. Prosecution for neglect of regulation.

Acquiring Land.

22. The provincial board of health may also, subject to the approval of the Lieutenant-Governor, issue regulations Power to take possession of land or

unoccupied building.

for taking possession of any land or any unoccupied building thereon, by the authority of the said provincial board of health, local board, or health officers, for any of the purposes mentioned in sections 13, 14, or 97, of this Act, but such regulations shall not authorize the taking or obtaining for the hospital of any municipality any land or buildings outside the limits of such municipality. 49 V. c. 42, s. 2.

Cases of emergency

23. In case of actual or apprehended emergency, such possession may be taken without a prior agreement with the owner of the land or building and without his consent, and may be retained for such period as may appear to the board or officers who took possession thereof, to be necessary. 49 V. c. 42, s. 3.

Notice to municipal clerk.

24. Written notice containing a reasonable description of the land shall, within five days after the taking or obtaining possession be given by the board or officer so taking or obtaining possession thereof, to the clerk of the local municipality wherein the land is situate; such notice shall be given whether possession is taken or obtained with the consent of the owner or otherwise. 49 V. c. 42, s. 4.

Proceedings where owner not consenting party.

25. Where possession is taken without the consent of the owner, the board or health officer by whom or under whose direction or authority possession is taken, shall within five days thereafter give notice thereof to the owner; such notice to be according to the form contained in schedule C hereto annexed, or to the like effect. In the event of any owner not being known, or not being resident within the Province of Ontario, or of his residence therein being unknown to the board or health officer required to give the notice, such board or health officer shall cause the notice to be published for two insertions in some local newspaper having a circulation within the municipality wherein the property is situate, and shall mail to the last known address (if any) of the owner, a copy of the notice in a registered letter prepaid, and such publication shall be sufficient notice to the owner. 49 V. c. 42, s. 5.

Compensation.

26. The owner of any land or building shall be entitled to compensation from the local municipality wherein the land or building is situate, for the use and occupation thereof, including any damages arising from such use and occupation, such compensation to be agreed upon between the municipal

council of the local municipality and the owner ; and in case they do not agree, the Judge of the County Court of the county wherein the property is situate, shall summarily determine the amount of the compensation, and the terms of payment, in such manner, and after giving such notices, if any, as he sees fit. 49 V. c. 42, s. 6.

Order for possession.

27. Where any resistance or forcible opposition is offered or apprehended to possession being taken of any land or building under this Act, or under any regulation which may be made by virtue thereof, the Judge of the County Court may, without notice to any person issue his warrant to the sheriff of the county, or to any other person as he may deem most suitable, requiring him to put the board or health officer, their or his servants or agents in possession, and to put down such resistance or opposition which the sheriff or bailiff (taking with him sufficient assistance) shall accordingly do. 49 V. c. 42, s. 7.

Restriction as to use of land or building.

28. No land or building to be used for the purposes of this Act shall be nearer than 150 yards to an inhabited dwelling. 49 V. c. 42, s. 8.

Proceedings on complaint to provincial board of default of local authority.

29—(1) Where information is obtained by the provincial board that any remediable unsanitary condition or nuisance exists in any municipality, and that the local health authorities have after proper representation of the facts, neglected or refused to take such efficient measures as might remove such condition or abate such nuisance, it shall be competent for the provincial board of health to institute an investigation, and, if necessary, take sworn evidence concerning the condition or nuisance complained of.

(2) If, upon such investigation it is proved that such remediable unsanitary condition or nuisance exists, it shall be within the province of the provincial board to direct its immediate removal or abatement by the person responsible therefor, and to report the same to the Minister for the time in charge of the department ; and if such person neglects or refuses to remove or abate the same, the provincial board of health may cause such removal or abatement to be made, and collect the expenses therefor from such person, by ordinary process of law. (*h*) 47 V. c. 38, s. 37.

(*h*) See sec. 53.

Plans relating to proposed public water supply or system of sewerage to be submitted to provincial board.

30—(1) Whenever the establishment of a public water supply or system of sewerage shall be contemplated by the council of any city, town, or village, it shall be the duty of the said council to place itself in communication with the provincial board of health, and to submit to the said board, before their adoption, all plans in connection with said system. (*i*)

(2) It shall be the duty of the provincial board of health to report whether, in its opinion, the said system is calculated to meet the sanitary requirements of the inhabitants of the said municipality; whether any of its provisions are likely to prove prejudicial to the health of any of the said inhabitants, together with any suggestions which it may deem advisable, and to cause copies of said report to be transmitted to the Minister of the department to which the said provincial board of health is attached, and to the clerk of the municipal council, and the secretary of the local board of health of the district interested.

(3) No sewer, or appliance for the ventilation of the same, shall be constructed in violation of any of the principles laid down by the provincial board of health, subject to appeal to the Lieutenant-Governor in Council. 47 V. c. 38, s. 38.

Medical Board of Health—Medical Health Officer.

Appointment of health officer by municipal councils.

31. Where from the presence of any formidable contagious disease in any locality, the provincial board of health considers the appointment of a medical health officer necessary for the municipality in which such disease exists, or for any neighbouring municipality, and requests the council of any such municipality to appoint a medical health officer,

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(*i*) The preservation of the public health is a matter of paramount municipal importance. *Ex parte Shrader*, 33 Cal. 279; *Ashbrook* v. *Commonwealth*, 1 Bush. (Ky.) 139; *Harrison* v. *Baltimore*, 1 Gill. (Md.) 264; *Gibbons* v. *Ogden*, 9 Wheat. (U.S.) 205. A City Council having power to pass By-laws "to preserve health," was held to have the power to procure a supply of water by boring an artesian well, or otherwise, on a public square, as they saw fit. *Livingston* v. *Pappin*, 31 Ala. 542; see also *Rome* v. *Cabot*, 28 Ga. 50; *Hale* v. *Houghton*, 8 Mich. 458; see further, sec. 489, sub-s. 42 of the Municipal Act. But it has been held that a municipal corporation owning lands on a water course distant from the city, had no right—unless acquired by purchase or by the exercise of the right of eminent domain—to divert water to the injury of other riparian proprietors. *Stein* v. *Burden*, 24 Ala. 130.

the council shall forthwith appoint a properly qualified medical practitioner to be medical health officer for the municipality. 48 V. c. 45, s. 2.

By provincial board.

32. If a council does not appoint a medical health officer within five days after a request in that behalf made by the provincial board, which request may be served upon the head of the council or its clerk, or mailed to either of such officers by registered letter post, the Lieutenant-Governor upon the recommendation of the provincial board may appoint a medical health officer for such municipality. 48 V. c. 45, s. 3.

Duration of office.

33. Every medical health officer appointed by the municipal council shall hold office during the pleasure of the council and if under the preceding section the medical health officer is appointed by the Lieutenant-Governor, he shall hold office until the 1st day of February in the year following that in which he is appointed; Provided always, that the municipal council may at any time, upon a two-thirds vote of its members, dismiss any medical health officer for a neglect of duty; and the decision of such council shall be final, and shall not render the corporation liable for any damages; the medical health officer shall be entitled to compensation for services actually rendered up to the time of such dismissal, but the amount of such compensation shall not exceed the salary he would have earned up to the time of such dismissal, and if his salary up to such time is paid, such payment shall be a bar to any other claim for services rendered. 48 V. c. 45, s. 4.

Compensation in case of dismissal.

Vacancy in office, how filled.

34. Whenever, during the presence of any formidable contagious disease in any municipality or neighbouring locality, any medical health officer becomes temporarily or permanently incapable of performing his duties, or resigns his office, or leaves the locality for which he has been appointed, the council shall forthwith appoint another medical health officer in his room. 48 V. c. 45, s. 5.

Case of several municipalities united into one health district.

35. Where two or more municipalities are united into a health district, the provisions of the preceding four sections of this Act shall apply, except that the power and duty of appointing or removing a medical health officer shall be with the district board of health, unless the councils of the municipalities composing such health district have, previous to any request in that behalf being made by the provincial

board, united in appointing a medical health officer for such municipalities, and the Lieutenant-Governor may, in case of their default, appoint a medical health officer for such district. 48 V. c. 45, s. 6.

Compensation of medical health officer.

36. In case the appointment of a medical health officer is made by the provincial board of health he shall be entitled to recover from the municipality reasonable compensation for his services. (*j*) 48 V. c. 45, s. 7.

His powers.

37. Where a medical health officer is appointed he shall possess all the powers and authority possessed by any health officer or sanitary inspector under this Act, and such medical health officer shall perform all duties imposed upon him by any regulations of the provincial board of health, and the fact that similar duties are by statute imposed upon the local board of health shall not relieve the medical health officer from the performance of such duties. 48 V. c. 45, s. 8.

Suspension of Municipal and School Elections.

Suspension of municipal and school elections.

38—(1) In case the provincial board of health reports to the Lieutenant-Governor that on account of the presence in any municipality of an epidemic or contagious disease, it would be dangerous to hold an election in such municipality, the Lieutenant-Governor may, upon application by the council of the municipality in that behalf, issue his proclamation postponing the holding of any intended municipal or school election, for a period not exceeding three months, and may from time to time further postpone such election if in the opinion of the said board the necessity for postponement continues.

(2) The Lieutenant-Governor may, by his said proclamation, name the days for holding the nomination and polling for the election, but in case no days are named therefor, the council shall, as soon as practicable after the period named in such proclamation, or the last of such proclamations, expires, by by-law name days for the nomination and polling.

(3) In case an election postponed under the provisions of this section is the annual election, or an election of the entire council, or of all the members of a board of trustees or other body the members of the council, board or other

(*j*) See note *n* to sec. 47.

body shall continue to hold office until their successors are elected. 48 V. c. 45, s. 9.

LOCAL BOARDS OF HEALTH.

Organization.

Local boards of health, their constitution and appointment.

39—(1) There shall be a local board of health in each township and incorporated village, to be composed of the reeve, clerk and three ratepayers, to be appointed annually by the municipal council. (*k*)

(2) There shall be a local board of health in each town containing less than four thousand inhabitants according to the municipal enumeration of the previous year, to consist of the mayor, clerk and three ratepayers, to be appointed annually by the municipal council.

(3) There shall be a local board of health for each city and for each town containing more than four thousand inhabitants, according to the municipal enumeration of the previous year, to consist of the mayor and eight ratepayers, to be appointed annually by the municipal council. (*l*) 47 V. c. 38, s. 12 (2-4).

(*k*) Where an action was brought to recover remuneration for medical services performed on the instructions of the corporation and of the board of health and it was objected that the by-law professing to appoint the board of health was invalid by reason of the fact that it merely purported to appoint three persons to be a board of health but did not make any mention of the officers who by this sub-section are made *ex-officio* members of the board of health and because it did not specifically state the three individuals named to be ratepayers it was held that looking at the provisions of the statute and considering that the attack made upon the by-law was not by motion to quash it or of a like character the objection could not be allowed to prevail. *Bogart* v. *Township of Seymour*, 10 O. R. 322.

(*l*) A by-law giving to a board of health "general supervision over the health of the city," and "all necessary power to carry the ordinance into effect," was held to include power to rent a building for a temporary hospital, to protect the city from an apprehended visitation of cholera, and to make the Corporation liable for the rent although it did not become necessary to make use of the building. *Aull* v. *Lexington*, 18 Mo. 401; *Barton* v. *New Orleans*, 16 La. An. 317; *Belcher* v. *Farrar*, 8 Allen (Mass.) 325; *Commissioners* v. *Powe*, 6 Jones, Law. (N. Car.) 134; *Hazen* v. *Strong*, 2 Vt. 427; *Wilkinson* v. *Albany*, 8 Fost. (N. H.) 9. Such a board would have power to make quarantine regulations. *Dubois* v. *Augusta*, Dudley (Geo.) 30; *St. Louis* v. *McCoy*, 18 Mo. 288; *St. Louis* v. *Buffinger*, 19 Mo. 13; *Metcalfe* v. *St. Louis*, 11 Mo. 103; *Mitchell* v. *Rockland*, 41 Maine, 363; 45 Maine, 496.

Appointment of members of board.

40. The appointments of members of the board (*m*) shall be made at the first meeting of the municipal council after being duly organized, and any vacancy arising from any cause shall be filled at the first meeting thereafter of the municipal council: but, if for any reason appointments are not made at the proper dates, the same shall be made as soon as may be thereafter. 47 V. c. 38, s. 13 (2).

Union of municipalities into one health district.

41. Two or more councils may, by concurrent by-laws, unite their respective municipalities into a health district: and any of such councils may withdraw its municipality from the district by a by-law passed prior to the 1st day of December of any year, and to take effect on the third Monday of January following. 47 V. c. 38, s. 14.

Constitution of district boards of of health.

42. The members of the district boards of health shall consist of three members of each municipality included in the district, namely, the head of the council, the municipal clerk, and one other ratepayer not a member of the council, to be appointed by the council. 47 V. c. 38, s. 15.

Powers of district boards.

43. Every district board thus constituted and its members shall, in respect of the health district for which it acts, possess the same powers, be subject to the same regulations, and perform like duties as a local board of health of a municipality and its members. 47 V. c. 38, s. 16.

Officers of local or district boards.

44. Every local or district board shall elect a chairman, and the clerk of the municipal council shall be the secretary of the local board, and the district board may elect one of its members, or appoint some other person as its secretary. 47 V. c. 38, s. 17.

Secretary to report to secretary of provincial board the names of members.

45. It shall be the duty of the secretary to report to the secretary of the provincial board of health the names of the members of the local board within one month after its first regular meeting which shall be held on the second Monday after the members, who are not members *ex officio*, have been appointed. 47 V. c. 38, s. 18.

Provincial board may appoint to local board

46. When any municipal council neglects or refuses to elect members or a member of the local or district board of health as required by this Act, the provincial board of health

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(*m*) The members of the local boards other than the *ex officio* members may or may not be members of the council, but they must be ratepayers. See sec. 39. As to district boards. See sec. 42.

may appoint a duly qualified ratepayer or ratepayers to be a member or members of such local or district board of health to act with the *ex officio* or other members. 47 V. c. 38, s. 19. In case council neglects to do so.

47. Every municipal council may appoint a medical health officer and a sanitary inspector or inspectors for the municipality, and may fix the salaries to be paid them, or two or more councils may unite in the appointment of any of these officers. (*n*) 47 V. c. 38, s. 20. Appointment of medical health officer and sanitary inspector.

Powers and Duties.

48. The municipal council or councils may vote such sums as are deemed necessary by the local or district board for the carrying on of its work. 47 V. c. 38, s. 21. Appropriation for work.

49. The treasurer of the municipality shall forthwith upon demand pay out of any moneys of the municipality in his hands the amount of any order given by the members of the local board, or any two of them, for services performed under their direction by virtue of this Act. R. S. O. 1877, c. 190, s. 28; 47 V. c. 38, s. 12 (1). Municipal treasurer to pay by order of local board.

50. The members of the local and district boards shall be called health officers, and shall have the powers and duties assigned to such officers by this Act; and any two or more of them acting in the execution of any regulations of the provincial board of health may exercise the powers and authorities conferred by sections 68 and 69. R. S. O. 1877, c. 190, s. 25; 47 V. c. 38, ss. 12 (1), 22. Health officers.

51. A majority of the number of any regularly consti tuted board shall be a quorum for the transaction of business. 47 V. c. 38, s. 23. Quorum.

52. A minute book shall be provided in which the secretary shall record the proceedings of the local board of health. Ths secretary shall draft and annual report of the sanitary work done during the year, an of the sanitary condition of the municipality, for the consideration of the board, which report, when adopted, shall be transmitted to the secretary of the provincial board of health. The said report shall Duties of secretary.

(*n*) Where the by-law appointing a medical health officer did not fix any salary it was held in an action by him for remuneration that the law would fix the salary at a reasonable sum, regard being had to the services performed and to be performed by the plaintiff. *Bogart* v. *Township of Seymour*, 10 O. R. 322. See also sec. 31 *et seq.*

include the annual report of the medical health officer. 47 V. c. 38, s. 24.

Mode in which local board may enforce its authority.

53. Whenever any local board of health has any authority to direct that any matter or thing should be done by any person or corporation, such local board of health may also, in default of its being done by the person, direct that such matter or thing shall be done at the expense of the person in default, and may recover the expense thereof with costs by action or distress; and, in case of non-payment thereof, the same shall be recovered in like manner as municipal taxes. 47 V. c. 38, s. 25.

Nuisances, etc.

Inspection of slaughter-houses.

54. All butchers selling within the limits of any municipality shall, on the request of the health authorities, make affidavit as to the place or places at which the slaughter of their meat is carried on, and where this is outside of the limits of the municipality such slaughter-houses shall be open to inspection by the inspector or medical health officer of the municipality where the meat is offered for sale. (*o*) In case of refusal to make such affidavit and permit said inspection, said butchers shall be subject to the penalties prescribed under section 106 of this Act, should the sale of meat be continued by them after notification to discontinue has been given by the medical health officer. 50 V. c. 34, s. 4.

Regulation of ice supplies.

55. The local board of health of any municipality or district in which supplies of ice are obtained, sold and stored shall have power to adopt such regulations regarding the source of supply, and the place of storage of the same, as shall in their opinion be the best adapted to secure the purity of the ice, and prevent injury to the public health. The powers and duties of all local boards in this respect shall extend to the supervision of ice supplies, whether obtained within or outside the municipality, whenever the ice cut is intended for use within the municipality in which the board has jurisdiction. 50 V. c. 34, s. 2.

Duty of local board to inspect districts for detection of nuisances.

56. It shall be the duty of every local board of health to cause to be made, from time to time, inspection of its district, in order to prevent the accumulation within the district of any dirt, filth or other thing which may endanger

(*o*) See secs. 8 and 9 of sched. A. See also sub-s. 44 of sec. 489 of the Municipal Act.

the public health, and with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act, in order to abate every such nuisance. 47 V. c. 38, s. 28.

Powers of medical health officer.

57. A medical health officer of a municipality may exercise any of the powers conferred upon health officers by sections 66, 67, and 70 of this Act, and may without being specially authorized by the board, exercise any powers which under section 68 can be conferred upon two medical practitioners, and the board may act on his report. 47 V. c. 38, s. 29.

Information of nuisances to local board.

58. Information of any nuisance or unsanitary condition under this Act within the jurisdiction of any local board may be given to such local board by any person aggrieved thereby, or by any two inhabitant householders, or by any officer of such local board, or by any constable or officer of the police force within the jurisdiction of the board. 47 V. c. 38, s. 30.

Investigation to be made by local board.

59. Whenever such information has been so given, it shall be the duty of the local board of health to investigate the cause of the complaint; and to hear the testimony of all persons who may be produced before it to testify in respect of such matter; and every local board or any two of its members shall have the same authority as a Justice of the Peace to require and compel the attendance of witnesses and the giving of evidence. 47 V. c. 38, s. 31.

Local board to serve notice requiring abatement of nuisances.

60. Whenever the local board of health is satisfied of the existence of the nuisance, it shall serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance exists or from which the same arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works, and do such things, as may be necessary for that purpose, provided :

First,—That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner;

Second,—That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act or default of the owner or occupier of the premises, and it is therefore improper that such

owner or occupier should be required to abate the said nuisance, the local board of health may abate the nuisance at the expense of the municipality or district. 47 V. c. 38, s. 32; 50 V. c. 34, s. 12.

Power to proceed where cause of nuisance arises without district.

61. Where a nuisance in a municipality or district appears to be wholly or partially caused by some act or default committed or taken place outside of the municipality or district, the board of health of the municipality or district may take or cause to be taken against the person by whose act or default the nuisance is caused in whole or in part, any proceedings in relation to nuisances by this Act authorized, with the same incidents and consequences, as if such act or default were committed or took place wholly within its jurisdiction, so, however, that summary proceedings shall in no case be taken otherwise than before a Court having jurisdiction in the municipality or district where the act or default is alleged to be committed or take place. 47 V. c. 38, s. 33.

Recovery of costs and expenses incurred in abating nuisances.

62. All reasonable costs and expenses incurred in abating a nuisance shall be deemed to be money paid for the use and at the request of the person by whose act, default or sufferance the nuisance was caused, and such costs and expenses shall be recovered by the municipal council or local board of health or person incurring the same, under ordinary process of law; and the Court shall have power to divide costs, expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just. 47 V. c. 38, s. 34.

Restriction on establishment of offensive trades.

63. In case a person establishes, (*p*) without the consent of the municipal council of the locality, any offensive trade, that is to say, the trade of:

Blood boiling, or
Bone boiling, or
Refining of coal oil, or
Extracting oil from fish, or
Storing of hides, or
Soap boiling, or
Tallow melting, or
Tripe boiling, or
Slaughtering of animals, or
The manufacturing of gas, or

(*p*) As to what is newly establishing a business, see *Liverpool New Market Co.* v. *Hodson*, L. R. 2 Q. B. 131.

any other noxious or offensive trade, business or manufacture, or such as may become offensive, (*q*) he shall be liable to a penalty not exceeding $250 in respect of the establishment thereof; and any person carrying on a business so established shall be liable to a penalty not exceeding $10 for every day on which, after notice in writing by the local board or an officer thereof, to desist, the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof. 47 V. c. 38, s. 35.

Provision where abatement of nuisance involves considerations of difficulty.

64—(1) If, on an investigation by any local board of health, any nuisance or thing prejudicial to health is found to exist in a municipality in which it has jurisdiction; and if, after the board has required the removal or abatement of the same within a specified time, the board finds that default in such removal or abatement has been made, and the case seems to the board one involving considerations of difficulty owing to the fact that such removal or abatement involves the expenditure or loss of a considerable sum of money, or that any trade or industry is seriously interfered with, or owing to other circumstances, the local board of health may apply to the provincial board of health to investigate and report upon the same, and it shall be the duty of the provincial board with the approval of the Minister of the department to make a full investigation and report.

(2) If the report recommends the removal or abatement of the nuisance or thing, the local board or any ratepayer residing in the municipality, or within a mile thereof, may apply to the High Court, for an order for the removal or abatement of the nuisance or unsanitary condition, and to restrain the proprietors of any such industry from carrying on the same until the said nuisance shall have been abated to the satisfaction of the provincial board of health; and the Court may issue such order upon the report of the provincial board of health. 47 V. c. 38, s. 36.

Inspection of dairies, etc., and slaughter-houses.

65. The medical health officer under the direction of the local board of health shall have authority to make or cause to be made by a veterinary surgeon, or such other competent person, as the circumstances may require, a periodic inspection of all dairies, cheese factories and creameries, dairy farms, and slaughter-houses, which come within his or their jurisdiction. (*r*) 50 V. c. 34, s. 5.

(*q*) See sub-s. 44 of sec. 489 of the Municipal Act.

(*r*) See secs. 9 and 10 of sched. A.

Health officers may enter and examine premises.

66. The health officers of any municipality or any two of them may, in the day time, as often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises. R. S. O. 1877, c. 190, s. 3.

Power to order cleansing.

67. If, upon such examination, they find that the premises are in a filthy or unclean state, or that any matter or thing is there which, in their opinion, may endanger the public health, they or any two of them, may order the owner or occupant of the premises to cleanse the same and to remove what is so found there. R. S. O. 1877, c. 190, s. 4; 47 V. c. 38, s. 12 (1).

Medical men may be authorized by the officers to examine.

68. Such health officers or a majority of them may also, by warrant under their hands, authorize any two medical practitioners to enter in and upon any house, out-house, or premises in the day time for the purpose of making enquiry and examination with respect to the state of health of any person therein; and may also, upon the report of such medical practitioners in writing recommending the same, cause any person found therein infected with a dangerously contagious or infectious disease to be removed to some hospital or other proper place; but no such removal shall take place unless the said medical practitioners state in their said report that such person can be removed without danger to life, and that such removal is necessary in order to guard against the spread of such disease to the adjoining house or houses. R. S. O. 1877, c. 190, s. 6; 47 V. c. 38, ss. 12 (1), 22.

On report of medical men, persons infected may be removed.

When inhabitants of a house may be removed.

69. Where a disease of a malignant and fatal character is discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, in a city, town, village, or township in Ontario, or within a mile thereof, and such house is situated in an unhealthy or crowded part of the city, town, village or township or adjoining country, or is in a filthy and neglected state, or is inhabited by too many persons, the health officers of the municipality or a majority of them may, at the expense of the municipality, compel the inhabitants of such dwelling-house or out-house to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken under the direction and at the expense of the municipality, for the immediate cleansing, ventilation,

purification, and disinfection of such dwelling-house or out-house. R. S. O. 1877, c. 190, s. 7; 47 V. c. 38, ss. 12 (1), 22.

Powers of officers if their orders disobeyed.

70. In case the owner or occupant of any dwelling or premises neglects or refuses to obey the orders given by the health officers, such health officers may call to their assistance all constables and peace officers, and such other persons as they think fit, and may enter into such dwelling or premises, and cleanse the same, and execute or cause to be executed therein the regulations of the provincial board of health or any by-law of the municipality, and remove therefrom and destroy whatsoever it is necessay to remore or destroy for the preservation of the public health. R. S. O. 1877, c. 190, ss. 5, 26; 47 V. c. 38, s. 12 (1).

Authority to dispose of refuse, etc., after removal.

71. Where under the provisions of this Act, or of any municipal by-law, the local board or any health officer removes any dirt, filth, refuse, debris, or other thing which is likely to endanger the public health or to become or cause a nuisance, or which is, or is causing a nuisance, such dirt, filth, refuse or other thing shall be subject to the disposition of the local board, or, if the officer is acting under a by-law of a municipal council, shall be subject to the disposition of the council, and the owner of such thing shall have no claim in respect thereof. 48 V. c. 45, s. 10.

Infectious Diseases and Hospitals—Provisions against Infection.

Local board to notify owner of premises requiring to be cleansed and disinfected.

72. Where a local board of health is of opinion on the certificate of its medical health officer or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any house, or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infections disease, it shall be the duty of such local board of health to give notice in writing to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect, to the satisfaction of the medical health officer, such house or part thereof and articles, within a time specified in such notice. (*s*) 47 V. c. 38, s. 41.

Penalty, if notice not complied with.

73. If the person to whom notice is given fails to comply therewith, he shall be liable to a penalty of not less than

(*s*) See sec. 7 of sched. A.

twenty-five cents and not exceeding $2 for every day during which he continues to make default; and the local board of health shall cause such house, or part thereof, and articles, to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner. 47 V. c. 38, s. 42.

Special provision in case of poverty of owner.

74. Where the owner or occupant of any house or part thereof is, from poverty or otherwise, unable, in the opinion of the local board of health, efficiently to carry out the requirements of the preceding two sections, such local board of health may, without enforcing such requirements on the owner or occupier, cleanse or disinfect such house, or part thereof, and articles, and defray the expense thereof. 47 V. c. 38, s. 43.

Carriage for conveyance of persons suffering from disease or accident.

75. Any local board of health may provide, maintain, or hire a carriage or carriages, suitable for the conveyance of persons suffering from disease or accident, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination. 47 V. c. 38, s. 45.

Isolation of persons having small-pox, etc.

76. The health officers of any municipality, or the local board of health, or any committee thereof, may isolate any person having the small-pox or other disease dangerous to the public health, and may cause to be posted up on or near the door of any house or dwelling in which such person is, a notice stating that such disease is within the said house or dwelling. (*t*) 45 V. c. 29, s. 16.

Notice to be given by householder in case of small-pox, etc.

77. Whenever any householder knows that any person within his family or household has the small-pox, diphtheria, scarlet fever, cholera, or typhoid fever, he shall (subject, in case of refusal or neglect, to the penalties provided by subsection 2 of section 106) within twenty-four hours give notice thereof to the local board of health, or to the medical health officer of the district in which he resides, and such notice shall be given either at the office of the medical health officer, or by a communication addressed to him and duly mailed within the time above specified, and in case there is no medical health officer then to the secretary of the local board of health either at his office or by communication as aforesaid. (*u*) 47 V. c. 38, s. 46.

(*t*) See rule 4 of sec. 17 of sched. A.

(*u*) See sub-s. 55 of sec. 489 of the Municipal Act.

Householder not to permit removal of person or of clothing.

78. No householder in whose dwelling there occurs any of the above mentioned diseases, shall permit any persons suffering from any such disease, or any clothing or other property to be removed from his house, without the consent of the board or of the medical health officer, or attending physician, and the said board, or medical health officer, or attending physician, shall prescribe the conditions of such removal. 47 V. c. 38, s. 47.

Removal of sick persons and others in same household.

79. No person sick with any of the diseases above specified shall be removed at any time except by permission and under direction of the board of health, or medical health officer, or attending physician, nor shall any occupant of any house in which there exists any of the above diseases, except typhoid fever, change his or her residence to any other place without the consent of the board or of the medical health officer, or attending physician, who shall in either case prescribe conditions, as aforesaid. 47 V. c. 38, s. 48.

Report to be made by physician.

80. Whenever any physician knows that any person whom he is called upon to visit is infected with small-pox, scarlet fever, diphtheria, typhoid fever, or cholera, such physician shall (subject in case of refusal or neglect to the penalties provided by sub-section 2 of section 106) within twenty-four hours give notice thereof to the local board of health, or medical health officer of the municipality in which such diseased person is, and in such manner as is directed, by rules 2 and 3 of section 17, of schedule A. 47 V. c. 38, s. 49.

Precautions to be taken against spread of infection.

81. When the small-pox, scarlet fever, diphtheria, cholera, or any other contagious disease, dangerous to the public health, is found to exist in any municipality, the health officers or local board of health shall use all possible care to prevent the spreading of the infection or contagion, and shall give public notice of infected places by such means as, in their judgment, is most effective for the common safety. 47 V. c. 38, s. 50.

Sick person or persons having access to the sick not to mingle with general public.

82 Except the attending physician or clergman, no person affected with small-pox, scarlet fever, diphtheria, or cholera, and no person having access to any person affected with any of said diseases shall mingle with the general public until such sanitary precautions as may be prescribed by

the local board or attending physician shall have been complied with. 47 V. c. 38, s. 51.

Power to enter on steamboats, etc.

83—(1) Where there is reason to suspect that any person who has the small-pox, diphtheria, scarlet fever, cholera, or typhoid fever, is in or upon any railway car, steamboat, stage, or other conveyance, the medical health officer or sanitary inspector of the municipality, or, if there is no such officer, any member of the local board of health, may enter such conveyance and cause any such person to be removed therefrom, and may detain the conveyance until it is properly disinfected; or such officer or member may, if he thinks fit, remain on or in, or re-enter and remain on or in, the said conveyance (with any assistants he may require) for the purpose of disinfecting the same, and his authority as a health officer shall continue in respect of such person and conveyance, notwithstanding the conveyance is taken into any other municipality.

(2) Any member or officer of the provincial board of health, or any medical practitioner authorized by such board, shall have the like authority. 47 V. c. 38, s. 52.

Isolation of persons infected or who have been exposed to infection.

84. In case any person coming from abroad, or residing in any municipality within the Province, is infected, or lately before has been infected with, or exposed to any of the said diseases, the health officers or local board of health of the municipality, where such person may be, may make effective provision in the manner which to them shall seem best for the public safety, by removing such person to a separate house, or by otherwise isolating him, if it can be done without danger to his health, and by providing nurses and other assistance and necessaries for him at his own cost and charge, or the cost of his parents or other person or persons liable for his support, if able to pay the same, otherwise at the cost and charge of the municipality. 47 V. c. 38, s. 53.

Persons recovering from sickness, and nurses to take precautions against spread of disease.

85. Persons recovering from any of the said diseases, and nurses who have been in attendance on any person suffering from any such disease, shall not leave the premises till they have received from the attending physician, or medical health officer, a certificate that in his opinion they have taken such precautions as to their persons, clothing, and all other things which they propose bringing from the premises, as are necessary to insure the immunity from infection of other

persons with whom they may come in contact, nor shall any such person expose him or herself in any public place, shop, street, inn, or public conveyance without having first adopted such precautions. 47 V. c. 38, s. 54.

Measures necessary for disinfection to be adopted.

86. All persons named in the last preceding section shall be required to adopt for the disinfection and disposal of excreta, and for the disinfection of utensils, bedding, clothing, and other things which have been exposed to infection, such measures as have been, or may hereafter be, advised by the provincial board of health or by the medical health officer, or such as may have been recommended by the attending physician as equally efficacious. 47 V. c. 38, s. 55.

Notice to be given to person in charge of conveyance in certain cases.

87. No person suffering from, or having very recently recovered from smallpox, diphtheria, scarlet fever, cholera, measles, or other disease dangerous to public health, shall expose himself, nor shall any person expose any one under his charge, who is so suffering, or who has recently recovered from any such disease, in any conveyance without having previously notified the owner or person in charge of such conveyance of the fact of his having, or having recently had, such disease. 47 V. c. 38, s. 56.

Conveyance to be disinfected.

88. The owner or person in charge of any such conveyance, must not, after the entry of any so infected person into his conveyance, allow any other person to enter it without having sufficiently disinfected it under the direction of the board of health or the supervision of the medical health officer, or sanitary inspector. 47 V. c. 38, s. 57.

Precautions to be taken respecting clothing, etc.

89. No person shall give, lend, transmit, sell, or expose any bedding, clothing, or other article likely to convey any of the above diseases, without having first taken such precautions as the board may direct as necessary for removing all danger of communicating any such disease to others. 47 V. c. 38, s 58.

Provision of means of disinfection.

90. Any local board of health may provide a proper place or portable furnace, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause all such articles to be disinfected free of charge, or may make reasonable charges for the disinfecting of the same as may be provided by by-law. 47 V. c. 38, s. 59.

Destruction of infected bedding, etc.

91. Any local board of health may direct the destruction of any bedding, clothing, or other articles, which have been exposed to infection, and may give compensation for the same. 47 V. c. 38, s. 60.

Houses or rooms occupied by sick persons to be disinfected before being let.

92. No person shall let or hire any house or room in a house in which any of the diseases mentioned in section 77 have recently existed, without having caused the house and the premises used in connection therewith to be disinfected to the satisfaction of the health authorities; and for the purposes of this section the keeper of an inn or house for the reception of lodgers shall be deemed to let for hire part of a house to any person admitted as a guest into such inn or house. 47 V. c. 38, s. 61.

Persons letting houses not to make false statements as to infectious diseases.

93. No person letting for hire or shewing for the purpose of letting for hire any house or part of a house, on being questioned by any person negotiating for the hire of such house or part of a house, as to the fact of there previously having been therein any person suffering from any infectious disorder, or any animal or thing infected thereby, shall knowingly make a false answer to such questions. 47 V. c. 38, s, 62.

Notice of existence of infectious diseases to be given where persons are attending school.

94. Whenever a case of smallpox, cholera, scarlatina, diphtheria, whooping cough, measles, mumps, glanders, or other contagious disease, exists in any house or household belonging to which are persons attending school, the householder shall, within eighteen hours of the time such disease is known to exist, notify the head teacher of such school or schools, and also the secretary of the local board of health, of the existence of such disease; and no member of such household shall attend school until a certificate has been obtained from the medical health officer, or legally qualified medical practitioner, that infection no longer exists in the house, and that the sick person, house, clothing, and other effects have been disinfected to his satisfaction; and until such certificate shall have been obtained, it shall be the duty of every member of the household, and of the teacher, to use all reasonable efforts to prevent the association of members of the said household with other children.

(2) Whenever the local board of health, or any of its officers or members know of the existence in any house of smallpox, cholera, scarlatina, diphtheria, whooping cough,

measles, mumps, glanders, or other contagious disease, they shall at once notify the head or other master of the school or schools at which any member of the household is in attendance; and, should it not be evident that said member has not been exposed to said diseases, or any of them, the teacher must forthwith prevent such further attendance until the several members present a certificate stating that infection no longer exists, as provided in the preceding sub-section.

(3) Whenever a teacher in any school has reason to suspect that any pupil has, or that there exists in the home of any pupil any of the above mentioned diseases, he shall be required to notify the medical health officer or, where none such exists, the local board of health on forms supplied by the school authorities, in order that evidence may be had of the truthfulness of the report; and he shall further be required to prevent the attendance of said pupil or pupils until medical evidence of the falsity of the report has been obtained. 50 V. c. 34, s. 1.

Municipalities may establish hospitals for small-pox patients, etc.

95. Every municipality may establish or erect, and may also maintain, one or more hospitals for the reception of persons having the small-pox or other disease which may be dangerous to the public health; or any two or more municipalities may join in establishing, erecting, or maintaining the same; but no such hospital shall be erected by one municipality within the limits of another municipality without first obtaining the consent of such other municipality to the proposed erection. (*v*) 45 V. c. 29, s. 12.

(*v*) The corporation of one municipality cannot, under this section, erect or establish a small-pox hospital within the limits of another, either of a temporary or a permanent character, without the sanction of the corporation of the latter. *Elizabethtown* v. *Brockville*, 10 O. R. 372. The Metropolitan Poor Act, 1867 (30 Vict. c. 6, Imp.) authorizes the formation of districts and district asylums for the care and cure of sick and infirm poor, creates corporations for that purpose, gives authority to the poor law board (now the local government board) to issue directions to these corporations, enables them to purchase lands and erect buildings for the purposes of the Act, and makes the rates of parishes and unions liable for the outlay thus incurred. But it does not by direct and imperative provisions order these things to be done, so that if, in doing them, a nuisance is created to the injury of the health or property of persons resident in the neighbourhood of the place where the land is purchased, or the buildings erected, it does not afford to these acts a statutory protection; and, therefore, where such nuisance was found as a fact it was held that the district board could not set up the statute, nor the

Regulation of hospital, sick, etc.

96. When any hospital shall be so established, the physician attending the same, or the sick therein, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such furniture and other articles as shall be used or brought there, shall be subject to such regulations as shall be made by the health officers or local boards of health. 45 V. c. 29, s. 13.

Power of local board to provide hospitals.

97. In case the small-pox, or any other disease dangerous to the public health, breaks out in any municipality, the health officers or local board of health, in case the municipality shall not have already provided the same, shall immediately provide such a temporary hospital, hospital-tent, or other place or places of reception for the sick and infected, as they shall judge best for their accommodation and the safety of the inhabitants, at the cost of the municipality, (*w*) and for that purpose may:

1. Themselves erect such hospital-tents, hospitals or places of reception; or

2. Contract for the use of any such hospital, or part of a hospital or place of reception; or

3. Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on; or

4. Two or more local boards of health may combine in providing a common hospital. 47 V. c. 38, s. 44.

Regulations.

98. Such hospital or place of reception shall be subject to such regulations as shall be made by the health officers or local boards of health. 45 V. c. 29, s. 14.

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orders of the poor law board under it, as an answer to an action, or to prevent an injunction issuing to restrain the board from continuing the nuisance. *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193. *Per* Lord Watson: When the terms of a statute are not imperative, but permissive, the fair inference is, that the Legislature intended that the discretion as to the use of the general powers thereby conferred should be exercised in strict conformity with private rights. *Ib.* See further, *Dixon* v. *Metropolitan Board of Works*, 7 Q. B. D. 418. Sanitary police, sanitary regulations, the erection of buildings in order to isolate the sick poor and to care for them at the expense of the public are matters essentially local and municipal, and come under local jurisdiction. *Village of St. Louis of Mile End* v. *City of Montreal*, M. L. R. 2 S. C. 218.

(*w*) See sec. 95 and note thereto. See also sec. 22.

Power of medical health officer or sanitary inspector to inspect meat, etc.

99—(1) Any medical health officer or sanitary inspector may, at all reasonable times, inspect or examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, grain, bread, flour, or milk exposed for sale, or deposited in any place for the purpose of sale, or for preparation for sale, and intended for food for man; the proof that the same was not exposed or deposited for any such purpose, or was not intended for food for man, resting with the party charged; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, grain, bread, flour, or milk, appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for food for man, he may seize and carry away the same, or cause it to be seized and carried away, in order that he may cause it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for food for man. (*x*)

(2) The person to whom the same belongs, or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding $100 for every animal, carcase, or fish, or piece of meat, flesh or fish, or any poultry or game, or for the parcel of fruit, vegetables, grain, bread or flour, or for the milk so condemned; or, at the discretion of the convicting justices or magistrate, without the infliction of a fine, to imprisonment for a term of not more than three months. 47 V. c. 38, s. 39.

Penalty for hindering officer from inspecting meat, etc.

100. Any person who in anymanner prevents any health officer or sanitary inspector from entering any premises and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, grain, bread, flour, or milk exposed or deposited for the purpose of sale and intended for food for man; or who obstructs or impedes any such medical officer, or inspector, or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding $25. 47 V. c. 38, s. 40.

Use of Force—Assistance by Constables, etc.

Powers for purpose of disinfecting things or persons.

101. Where a local board of health, or any health officer, is required or empowered, under this Act or any public health Act, or under any regulations made thereunder, to disinfect any person or thing, or to isolate any person, such

(*x*) See sub-s. 50 of sec. 489 of the Municipal Act, and sec. 11 of sched. A to this Act.

board or officer may use such force and employ such assistance as is necessary in order to accomplish what is required. 48 V. c. 45, s. 11.

Officer if obstructed may summon assistance.

102. Any member of a legally constituted board of health or any medical health officer or sanitary inspector may, when obstructed in the performance of his duty, call to his assistance any constable or other person he thinks fit, and it shall be the duty of every such constable so called upon to render such assistance. 47 V. c. 38, s. 64.

Appeal to County Judge.

Appeal to County Judge in certain cases.

103. Where the order of any local board of health or health officer involves an expenditure of more than $100, the party against whom the order is made, or any one chargeable with such expenditure, or any part thereof, may within four days from his being served with a copy of such order in writing, appeal therefrom to the County Judge, who shall have full authority to vary or rescind the order made, and any order so varied may be enforced by the board or officer in the same manner as an order originally made by the board or officer. 47 V. c. 38, s. 26.

EXPENSES IN RESPECT OF ABATEMENT OF NUISANCES.

Recovery of costs and expenses of execution of provisions relating to nuisances.

104—(1) Any costs and expenses recoverable from an owner of premises under this Act, or under any provision of law in respect of the abatement of nuisances, may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of said premises, as if the same had actually been paid to such owner as part of said rent; Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses truly to disclose the amount of his rent, and the name and address of the person to whom rent is payable; but the burden of proof that the sum demanded from such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall be on such occupier.

Proviso.

(2) Nothing in this section contained shall affect any contract between any owner or occupier of any house, building, or other property whereby it is, or may be, agreed that the occupier shall pay or discharge all rates and dues and sums of money payable in respect of such house, building or other property, or affect any contract, whatever between landlord and tenant. 47 V. c. 38, s. 27.

PENAL CLAUSES.

Where application in respect of nuisance must be made to High Court.

105. No determination or order of the provincial or local board of health for the removal or abatement of any nuisance shall be enforced, except by order of the High Court where such removal or abatement involves the loss or destruction of property of the value of $2,000 or upwards, and upon any application to the High Court, the order of the provincial or local board shall not be evidence that the matter or thing complained of, was, or is in fact a nuisance. 48 V. c. 45, s. 15, (4).

Penalty for violating ss. 87-89, 92, 93.

106.—(1) Every person violating sections 87, 88, 89, 92, or 93 of this Act, shall be liable for every such offence to a penalty of not less than $5, nor more than $50, in the discretion of the convicting Justices or Magistrate, besides costs which may also be inflicted if the convicting Justices or Magistrate see fit to impose the same.

Penalty for offences against Act

(2) Any person who violates any other provision of this Act shall, unless it is otherwise specially provided, be liable for every such offence to a penalty not exceeding $20 in the discretion of the convicting Justices or Magistrate, besides costs, which may also be inflicted if the convicting Justices or Magistrate see fit to impose the same. 47 V. c. 38, s. 65, (1, 2.)

Penalty for violating regulations of provincial board of health.

(3) Any person who violates any regulation of the provincial board of health, shall be liable for every such offence to a penalty not exceeding $20 in the discretion of the convicting Justices or Magistrate, besides costs which may also be inflicted, if the convicting Justices or Magistrate see fit to impose the same.

Defaults and omissions.

(4) Where any person has been convicted of an offence under this Act, or under any regulation or by-law enacted or in force thereunder, and such offence is in the nature of an omission or neglect, or is in respect of the existence of a

nuisance or other unsanitary condition, which it is such person's duty to remove, or is in respect of the erection or construction of anything contrary to the provisions of this Act, or of any regulation or by-law enacted or in force thereunder then, in case the proper authority in that behalf gives reasonable notice to such person to make good such omission or neglect, or to remove such nuisance or unsanitary condition, or to remove the thing which has been erected or constructed contrary to this Act, or to such regulation or by-law, and default is made in respect thereto, the person offending may be convicted for such default, and shall be liable to the same punishment as was, or might have been, imposed for the original offence, and so on, from time to time, as often as after another conviction a new notice is given and the default continues; and in the case of a third or subsequent conviction, it shall not be necessary in the information, conviction, or other proceedings to make any reference to any conviction except the first, or to any notice except that in respect of which the proceedings are then being taken. 48 V. c. 45, s. 15 (2, 3).

Recovery of penalties.

107. Every penalty imposed by or under this Act may be recovered by any person before any two Justices or a Police Magistrate having jurisdiction in the municipality, and shall be levied by distress and sale of the goods and chattels of the offender, with the costs of such distress and sale, by warrant under the hands and seals of the Justices, or the hand and seal of the Police Magistrate, before whom the same is recovered, or under the hands and seals of any other two Justices having jurisdiction in the municipality, and in default of sufficient distress the said Justices or Magistrate may commit the offender to the common gaol, or to any lock-up, or house of correction in the said municipality for any time not exceeding fourteen days, unless the amount imposed is sooner paid. 47 V. c. 38, s. 66 (1).

Provision where non-compliance caused by poverty, etc.

108. In case any person, from poverty or other sufficient cause, is unable to comply with the provisions of this Act or any of them, he shall give notice of such inability to the medical health officer or secretary of the local board of health, and in case the local board on examination is satisfied of the sufficiency of the cause of such inability, the secretary thereof shall give his certificate to that effect, and such certificate shall be a bar to all proceedings against such person for the period of six months. 47 V. c. 38, s. 66 (2).

Remedy for tenant when board neglects action.

109. In all cases where any person deems himself injuriously affected, through the refusal or neglect of any person to carry out the directions of the sanitary inspector or the local board of health under sections 5, 6, or 7 of schedule A, it shall be lawful for him to lay information before a Justice of the Peace or Police Magistrate, when, after evidence has been given of the violation of any of these sections, the offender or offenders shall be made liable to the penalties imposed under section 18 of the said schedule. 50 V. c. 34, s. 3.

Application of penalties.

110. Every penalty recovered under this Act shall be paid to the treasurer of the municipality in which the offence was committed, for the use of the local board of health and subject to its disposition. 47 V. c. 38, s. 67.

Provision where act is a violation of Act and of by-law.

111. Where any act or omission is a violation of any express provision of this Act and is also a violation of a by-law of a municipality in respect of a matter over which the council of the municipality has jurisdiction, a conviction may be had under either the Act or the by-law, but a second conviction shall not be made for the same act or omission. 47 V. c. 38, s. 69 (4).

PROCEEDINGS NOT TO BE QUASHED FOR WANT OF FORM, OR REMOVED INTO HIGH COURT.

Proceedings not to be quashed for want of form or removed into High Court.

112. No order or other proceeding, matter or thing, done or transacted in or relating to the execution of this Act shall be vacated, quashed or set aside for want of form, or be removed or removable by *certiorari* or other writ, or process whatsoever, into the High Court, and no appeal shall be had to the General Sessions upon any conviction under this Act. 47 V. c. 38, s. 68.

BY-LAW IN FORCE IN EVERY MUNICIPALITY.

Application of enactments in Schedule A.

113.—(1) The enactments contained in schedule A, appended to this Act, shall be in force in every municipality in this Province for which there is a medical health officer and a sanitary inspector as a by-law of such municipality, as if enacted by the council thereof, except in so far as they have been or shall hereafter be altered, amended or repealed by the council (schedule B.); and the council of every local municipality shall have authority to pass by-laws from time

to time in respect of the various matters dealt with by the said enactments.

(2) In any municipality which has no medical health officer and sanitary inspector, or has only one of these officers, the said enactments shall, except as aforesaid, be in force unless so far as they relate to the officer which such municipality does not possess.

(3) Where two or more municipalities join in the appointment of a health officer or sanitary inspector, such officer or inspector shall be deemed to be the health officer or inspector of each of the said municipalities. 47 V. c. 38, s. 69 (1-3).

SCHEDULE A.

(Sec. 113)

BY-LAW IN FORCE IN EVERY MUNICIPALITY TILL ALTERED BY THE MUNICIPAL COUNCIL.

Duty of medical health officer.

1. It shall be the duty of the Medical Health Officer to assist and advise the Board and its officers, in matters relating to public health, and to superintend, under the direction of the Board, the enforcement and observance, within this municipality, of health by-laws or regulations, and of Public Health Acts, and of any other sanitary laws, and, if thought advisable by the Board of School Trustees, to act as medical inspector of Schools, as well as advisory officer in matters pertaining to school hygiene, and to perform such other duties and lawful acts for the preservation of the public health, as may, in his opinion, be necessary, or as may be required by the Board of Health. He shall also present to this Board, before the 15th day of November in each year, a full report upon the sanitary condition of the district.

Duty of sanitary inspector.

2. The sanitary inspector, besides performing the duties hereafter indicated by this By-law as belonging specially to him, shall assist the medical health officer and perform such other duties as may from time to time be assigned to him by the Board of Health or its chairman.

Chairman of board of health to report to council.

3. The chairman of the Board of Health shall, before the 1st day of December in each year, present to the Municipal Council or Municipal Councils, comprised within this district, a report containing a detailed statement of the work of the Board during the year, and the report of the sanitary condition of the Municipality, as rendered to the Board by the medical health officer. A copy of each such report shall be transmitted by the secretary to the secretary of the Provincial Board of Health.

Deposits endangering

4. No person shall within this municipality suffer the accumulation upon his premises, or deposit, or permit the deposit, upon any lot belonging to him, of any thing which may endanger the public health

or deposit upon, on or into, any street, square, lane, by-way, wharf, dock, slip, lake, pond, bank, harbour, river, stream, sewer, or water any manure or other refuse, or vegetable or animal matter, or other filth. Public health forbidden.

5. It shall be the duty of the sanitary inspector, to keep a viligant supervision over all streets, lanes, by-ways, lots, or premises, upon which any such accumulation as aforesaid may be found, and at once to notify the parties who own or occupy such lots or premises, or who either personally or through their employees have deposited such manure, refuse, matter, dirt, or filth, in any street, lane, or by-way, to cleanse the same, and to remove what is found thereon, such parties shall forthwith remove the same, and if the same be not removed within twenty-four hours after such notification, the inspector may prosecute the parties so offending, and he may also cause the same to be removed at the expense of the persons or person so offending. He shall also inspect at intervals, as directed by the Board of Health, all premises, occupied by persons residing within its jurisdiction, and shall report to the Board each and every case of violation of any of the provisions of this by-law, or of any other regulations for the preservation of the public health, and shall also report every case of refusal to permit him to make such inspection. Duty of sanitary inspector as to yards, etc.

6. Whenever it shall appear to the Board, or to any of its officers, that it is necessary for the preservation of the public health, or for the abatement of anything dangerous to the public health, or whenever they or he shall have received a notice signed by one or more inhabitant householders of this municipality, stating the condition of any building in the municipality to be so filthy as to be dangerous to the public health, or that upon any premises in the municipality there is any foul or offensive ditch, gutter, drain, privy cess-pool, ash-pit, or cellar, kept or constructed so as to be dangerous or injurious to the public health, or that upon any such premises an accumulation of dung, manure, offal, filth, refuse, stagnant water, or other matter, or thing, is kept so as to be dangerous or injurious as aforesaid, it shall be the duty of the sanitary inspector to enter such buildings or premises for the purpose of examing the same, and, if necessary, he shall order the removal of such matter or thing as aforesaid. If the occupant, or proprietor, or his lawful agent or representative, having charge or control of such premises, after having had twenty-four hours notice from any such officer of the Board of Health to remove or abate such matter or thing as aforesaid shall neglect or refuse to remove or abate the same, he shall be subject to the penalties imposed under section 18 of this by-law. Examination of buildings or premises by sanitary inspectors.

7. If the Board is satisfied upon due examination, that a cellar, room, tenement, or building within its jurisdiction, occupied as a dwelling-place, has become by reason of the number of occupants, want of cleanliness, the existence therein of a contagious or infectious disease, or other cause, unfit for such purpose, or that it has become a nuisance, or in any way dangerous to the health of the occupants, or of the public, they may issue a notice in writing to such occupants or any of them, requiring the said premises to be put in proper sanitary condition, or if they see fit, requiring the occupants to quit the premises within such time as the Board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply Notice to put premises in proper sanitary condition or to quit same.

with the terms of the notice, every person so offending shall be liable to the penalties imposed by section 18 of this by-law, and the Board may cause the premises to be properly cleansed at the expense of the owners or occupants, or may remove the occupants forcibly and close up the premises, and the same shall not again be occupied as a dwelling-place until put into proper sanitary condition.

Distance of slaughter-house, etc.

8. No proprietor or tenant of any shop, house or outhouse, shall, nor shall any butcher or other person, use any such house, shop, or outhouse at any time as a slaughter-house or for the purpose of slaughtering any animals therein, unless such shop, house, or outhouse be distant not less than two hundred yards from any dwelling-house, and distant not less than seventy yards from any public street.

Inspection of slaughter-house.

9. All slaughter-houses within this municipality shall be subject to regular inspection under the direction of the Board of Health; and no person shall keep any slaughter-house unless the permission in writing of the Board for the keeping of such slaughter-house has been first obtained, and remains unrevoked. Such permission shall be granted, after approval of such premises upon inspection, subject to the condition that the said houses shall be so kept as not to impair the health of persons residing in their vicinity, and upon such condition being broken the said permission may be revoked by the Board; and all animals to be slaughtered, and all fresh meat exposed for sale in this municipality shall be subject to like inspection.

Inspection of cow byres, cheese factories and creameries.

10. All milch cows and cow byres, and all dairies or other places in which milk is sold or kept for general use, and all cheese-factories and creameries shall be subject to regular inspection under the direction of the said Board; and the proprietors shall be required to obtain permission in writing from the Board, to keep such dairy or other place in which milk is sold or kept as aforesaid, or to keep a cheese factory or creamery, and the same shall not be kept by anyone without such permission, which shall be granted after approval of such premises upon inspection, subject to the condition that all such places as aforesaid are so kept and conducted that the milk shall not contain any matter or thing liable to produce disease either by reason of adulteration, contamination with sewage, absorption of disease germs, infection of cows, or any other generally recognized cause, and upon such condition being broken the said permission may be revoked by the Board.

Sale of diseased food.

11. No person shall offer for sale as food within this municipality any diseased animal, or any meat, fish, fruit, vegetables, milk, or other article of food which, by reason of disease, adulteration, impurity, or any other cause shall be unfit for use.

Supply of drinking water.

12. It shall be the duty of the owner of every house within this municipality to provide for the occupants of the same a sufficient supply of wholesome drinking water; and in case the occupant or occupants of any such house is or are not satisfied with the wholesomeness or sufficiency of such supply, he or they may apply to the Board of Health to determine as to the same; and if the supply be sufficient and wholesome, then the expenses incident to such determination shall be paid by the said occupant or occupants, and if not, then they shall be paid by the owner; and in either case the said charges shall be recoverable in the same manner as municipal taxes.

13. All wells in this municipality which are in use, whether such wells are public or private, shall be cleaned out before the 1st day of July in each year, and in case the Board of Health certifies that any well should be filled up, such well shall be forthwith filled up by the owner of the premises. Wells to be cleaned out, etc.

14. The following code of rules and regulations for the disposal of sewage and refuse shall constitute a part of this by-law, and any person or persons violating or neglecting any of the said rules and regulations shall be liable to the fines and penalties imposed by section 18 of this by-law. Rules respecting disposal of sewage and refuse.

RULE 1. No privy-vault, cess-pool, or reservoir into which a privy water-closet, stable, or sink is drained, shall be established until the details of such establishment shall have been submitted to and obtained the approval in writing of the medical health officer, who shall, from time to time, determine, with the approbation of the Board, the method of disposal of excreta, sewage, and other refuse, to be adopted within the district. Details of establishment of privy vaults, etc., to be approved by medical health officer.

RULE 2. Earth privies or earth closets without a vault below the surface of the ground do not come within Rule 1, but sufficient dry earth, wood-ashes, or coal-ashes to absorb all the fluid parts of the deposit must be thown upon the contents of such earth privies and closets daily; the contents when removed from the closet must be placed in a shed on box with rain-proof cover, and removed from the premises at least once a year on or before the 15th day of May. Time deposits to be removed.

RULE 3. If the exigencies or circumstances of the municipality require that privy-vaults, cess-pools, or reservoirs shall be allowed in accordance with Rule 1, they shall be cleaned out at least once a year, on or before the 15th day of May, and from the 15th day of May to the 1st day of November in each year they shall be thoroughly disinfected by adding to the contents of the vault, cess-pool, or reservoir, once a month, not less than two pounds of sulphate of copper, dissolved in two pailfuls of water, or other suitable disinfectant. Cleaning out and disinfecting privy vaults, etc.

RULE 4. Within the limits of this municipality no night-soil or contents of any cess-pool shall be removed unless previously deodorized as above, and during its transportation the material shall be covered with a layer of fresh earth, except the removal shall have been by some odorless excavating process. Deodorization before removal.

RULE 5. All putrid and decaying animal or vegetable matter must be removed from all cellars, buildings, out-buildings and yards on or before the 15th day of May in each year. Time for removal of decayed animal or vegetable matter.

RULE 6. Every householder and every hotel and restaurant-keeper or other person shall dispose of all garbage, for the disposal of which he is responsible, either by burning the same or by placing it in a proper covered receptacle for swill and house offal, the contents of which shall, between the 15th day of May and the 1st day of November, be regularly removed as often as twice a week. Time for removal of garbage.

RULE 7. Between the 15th day of May and the 1st day of November, no hog shall be kept within this limits of this municipality, except in pens seventy feet from any house, with floors kept free from standing water and regularly cleansed and disinfected. Hogs.

Livery stable.

RULE 8. The keeper of every livery or other stable shall keep his stable and stable-yard clean, and shall not permit, between the 15th day of May and the 1st day of November, more than two waggon-loads of manure to accumulate in or near the same at any one time, except by permission of the Board of Health.

House construction.

15. The following regulations regarding the construction of houses shall be in force within this municipality :

Soil of building sites to be disinfected.

RULE 1. No house shall be built in or upon any site, the soil of which has been made up of any refuse, unless such soil shall have been removed from such site, and the site disinfected, or unless the said soil shall have been covered with a layer of charcoal, covered by a layer of concrete at least six inches thick and of such additional thickness as may be requisite under the circumstances to prevent the escape of gases into such proposed house.

Ventilation of drains, etc.

RULE 2. The drain of every house which may be connected with a sewer or cess-pool shall be ventilated by means of a pipe extending upward from the highest point of the main soil or waste-pipe, and also by a pipe carried upward from the drain outside the walls of the house according to the principles shewn in the appended diagram. These pipes shall be of the same dimensions as the said main soil or waste-pipe, and shall be constructed of the same material or of stout galvanized iron, and no trap shall intervene between the said ventilating pipes. In case a trap shall intervene between the sewer or cess-pool, and the ventilating pipes already described, then a four inch ventilating pipe of the same material as above described shall be carried from a point between such trap and the sewer. All such ventilating pipes shall be carried above the roof of the said house, and shall open above at points sufficiently remote from every window, door, sky-light, chimney or other opening leading into any house.

No pipe carrying air or gas from any drain or soil-pipe shall be connected with any chimney in a dwelling-house, unless the same be a furnace chimney used exclusively for the purpose of ventilating such soil-pipe or drain.

Description of drain pipes.

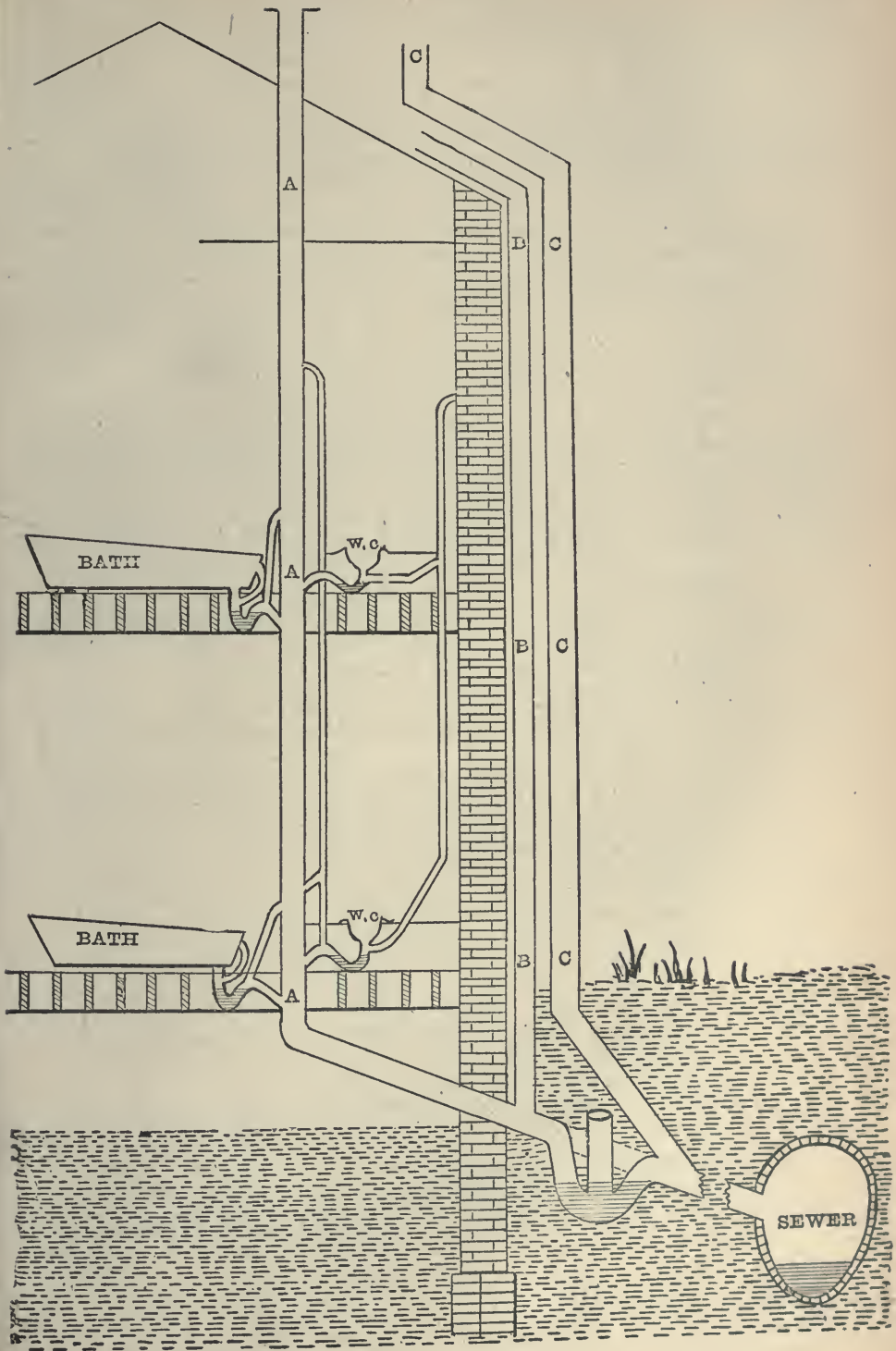
RULE 3. Every house-drain shall be constructed of vitrified earthenware or iron pipe ; and every soil and waste-pipe, of iron pipe rendered impervious to gas or liquids, the joints thereof being run with lead and caulked, or of lead pipe weighing at least 6 lbs. to the square foot ; and the waste pipe from every closet, sink, tub, wash-basin, safe, or other service shall have as near as may be to the point of junction with such service a trap so constructed, vented, and furnished, that it shall at no time allow of the passage of gas into such house. All joints shall be so constructed as to prevent gas escaping through them.

Certain closets prohibited.

RULE 4. The construction of any closet or other convenience which shall allow of the escape into the house of air or gas which has been confined in any part of it or from the drain or soil pipe, is hereby prohibited.

Refrigerator waste.

RULE 5. No refrigerator waste shall be allowed to connect with any drain.



A—Extension upwards of soil pipe.
B—Second ventilating tube.

Pipes supplying water to closets.

RULE 6. No pipe supplying water directly to a water-closet or urinal, shall be connected with the pipe supplying water for drinking purposes.

Plumbing and drainage plans to be filed.

16. Every person who erects, or causes to be erected, any building shall, within two weeks of the completion thereof, deposit in the Registry Office of the Registry Division in which the building is situated, plans of the drainage and plumbing of the same as executed; and in the case of any alteration of any such plumbing or drainage, it shall be the duty of the owner of the house, within two weeks of the making of the alteration, to deposit in the same manner the plan and record of any such alteration; if such alteration is made by a tenant, it shall be the duty of the tenant or lessee to deposit or cause to be deposited the plan and record of such alteration.

17. The following rules for preventing the spread of infectious and contagious diseases shall constitute a part of this By-law:

Rules respecting infectious and contagious diseases.

Duties of medical health officer.

RULE 1. The medical health officer [or secretary of the Local Board of Health] shall provide each medical practitioner, practising within this municipality, with blank forms on which to report to the said medical heath officer [or secretary] any case of diphtheria, small-pox, scarlet fever, cholera, typhoid fever, measles, whooping-cough or other disease dangerous to the public health, and, also, with other blank forms on which to report death or recovery from any such disease.

Forms, kind of.

RULE 2. All such forms shall be so printed, gummed, and folded that they may be readily sealed, without the use of an envelope, so as to keep them from perusal until opened by the medical health officer [or secretary].

Blank forms.

RULE 3. Said blank shall be in accordance with the following forms:

Report of Infectious Disease.

Christian name and surname of patient:
Age of patient:
Locality (giving street, number of house or lot), where patient is:
Name of disease:
Name of school attended by children from that house;
Measures employed for isolation and disinfection:

(Signature of physician):

.....

Report of Death or Recovery from Infectious Disease.

Christian name and surname of patient:
Locality (giving street, number of house or lot), where patient is:
Name of disease:
How long sick:
Whether dead or recovered:
Means of disinfection employed, and when employed:

(Signature of physician):

.....

RULE 4. The medical health officer [or secretary], within six hours after he shall have received a notice of the existence of scarlet fever, diphtheria, small-pox, cholera, or whooping-cough, in any house, shall affix or cause to be affixed by the head of the household or by some other person, near the entrance of such house a card at least nine inches wide and twelve inches long, stating that such disease exists in the said house, and stating the penalty for removal of such card without the permission of the medical health officer or Board of Health. Notice of disease to be posted up.

RULE 5. No person shall remove such card without the permission of the Board of Health or one of its officers. Not to be removed.

RULE 6. No animal affected with an infectious or contagious disease shall be brought or kept within this municipality, except by permission of the Board of Health. Animals affected.

18. Any person who violates sections 4, 6, 7, 9 or 11 of this by-law, or Rule 1 of section 15, or Rule 5 or 6 of section 17, shall be liable, for every such offence, to a penalty of not less than $5 nor more than $50 in the discretion of the convicting Justices or Magistrate, besides costs, which may also be inflicted if the committing Justices or Magistrate see fit to impose the same. Any person who violates any other provision of this by-law shall be liable for every such offence to a penalty not exceeding $20, in the discretion of the convicting Justices or Magistrate, besides costs, which may also be inflicted if the convicting Justices or Magistrate see fit to impose the same. Every such penalty may be recovered by any person before any two Justices or a Police Magistrate having jurisdiction in the municipality, and shall be levied by distress and sale of the goods and chattels of the offender, with the costs of such distress and sale by warrant under the hands and seals of the Justices, or the hand and seal of the Police Magistrate, before whom the same are recovered, or under the hands and seals of any two Justices having jurisdiction in the municipality, and in default of sufficient distress the said Justices or Magistrate may commit the offender to the common gaol or to any lock-up or house of correction in the said municipality for any time not exceeding fourteen days, with or without hard labour, unless the amount imposed be sooner paid. Penalties.

47 V. c. 38, sched. A.

SCHEDULE B.

(Section 113.)

FORM OF MUNICIPAL BY-LAW AMENDING THE ABOVE BY-LAW.

By-law Number —, intituled "A By-law respecting the Public Health By-law."

Whereas it is expedient to amend or repeal some of the provisions of the by-law appended to *The Public Health Act*, so far as the same are in force in this municipality, and to suspend the operation of other provisions of the said by-law.

Be it therefore enacted by the Municipal Council of

1. Section 13 of the said by-law is hereby amended by substituting the "1st day of July of every second year" for "the 1st day of July in each year."

2. Rule 7 of section 14 of the said by-law is amended by striking out the words "and disinfected" at the end of the said rule.

3. Rule 3 of section 14 is hereby repealed.

4. This by-law shall go into force forthwith.

47 V. c. 38, *Sched.* B.

SCHEDULE C.

(Section 25.)

PUBLIC HEALTH.

Take notice that by virtue of *The Public Health Act*, and the regulations made thereunder, possession has been taken, (*or* obtained, *as the case may be*) of the following land (*or* "building," *as the case may be*,) namely :

(Reasonable Description)

and further take notice that such land (*or* building) will be occupied and used for the purposes of the said Act and regulations from and after the date hereof, for a period of or such other time as may, in the discretion of the undersigned, be necessary.

Dated, etc.

49 V. c. 42, *Sched.*

R. S. O. cap. 206.

An Act respecting Vaccination and Inoculation.

HOSPITALS TO PROVIDE SUPPLY OF VACCINE MATTER, ss. 1-3.
MUNICIPALITIES TO PROVIDE FOR VACCINATION OF RESIDENTS, ss. 4-6.
VACCINATION OF CHILDREN, ss. 7-11.
Penalty, s. 13.
Plea of previous conviction when allowed, s. 14.
FEES FOR VACCINATION, s. 12.
ENFORCING VACCINATION, s. 15,
VACCINATION OF CHILDREN ATTENDING SCHOOL, s. 16.
VACCINATION OF STUDENTS OF HIGH SCHOOLS, ETC. s. 17.
PENALTY FOR INOCULATING WITH VARIOLOUS MATTER, s. 18.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Trustees, etc., of hospitals to keep vaccine matter for certain purposes.

1. The trustees, governors, directors, or other officers or persons having at any time the control and management of any hospital or dispensary receiving aid from the public funds of this Province, shall keep at all times in such hospital or dispensary an adequate supply of vaccine matter for the following purposes, viz :

For the vaccination of the poor.

First.—For the vaccination, by a legally qualified medical practitioner attached to such hospital or dispensary, at the expense of the same, of all poor persons, and at their own expense of all other persons, who attend at such hospital or dispensary for that purpose, during one day in every week ; the fee to be charged for such vaccination not in any case to exceed fifty cents, and to be used and applied for the benefit of the hospital or dispensary ;

Fee.

How applied.

For furnishing legally qualified medical practitioners.

Second.—For the purpose of furnishing, on application, to each and every legally qualified medical practitioner, such reasonable quantities of the said matter as he from time to time requires ;

For the use of the Indians.

Third.—For the purpose of furnishing on application, to the Superintendent-General of Indian Affairs, or his assis-

tant, or to any visiting superintendent of Indian Affairs, such reasonable quantities of the said matter as he may from time to time require for the use and benefit of any settlement of Indians. R. S. O. 1877, c. 191, s. 1.

No warrant for the payment of money to issue to any hospital unless it has a sufficient quantity of vaccine matter on hand, etc.

2. No warrant shall hereafter issue for the payment of any sum of money granted by the Legislature to any hospital or dispensary, unless a certificate has been filed in the office of the Clerk of the Executive Council, signed by a medical officer of such hospital or dispensary, to the effect that there is actually on hand in such hospital or dispensary a supply of vaccine matter which is expected to be sufficient for the purposes aforesaid from the date of such certificate, or setting forth reasons and grounds in explanation of any deficiency in such supply to the satisfaction of the Lieutenant-Governor in Council, nor unless, nor until a certificate signed as aforesaid to the effect that at no time since the date of the then last certificate in this behalf, has the demand upon such hospital or dispensary for such matter for the purposes aforesaid, exceeded the supply thereof on hand in such hospital or dispensary, or setting forth reasons and grounds in explanation of any deficiency of such supply, to the satisfaction of the Lieutenant-Governor in Council, has been filed as aforesaid. R. S. O. 1877, c. 191, s. 2.

Annual statement to be laid before Legislature respecting vaccination.

3. The trustees, governors, directors, or other officers or persons having for the time being the control and management of any hospital or dispensary to which aid has been granted during any session of the Legislative Assembly of this Province, shall cause to be transmitted to the Lieutenant-Governor through the Provincial Secretary, in time to admit of copies thereof being laid before the Legislative Assembly, during the first fifteen days of the then next session, a statement certified by the proper officers of such hospital or dispensary, shewing the number of persons who have applied for and received free vaccination, the number of persons who have applied for and received vaccination at their own expense, and the number, amount and application of fees charged and received for vaccination. R. S. O. 1877, c. 191, s. 4.

Municipalities to employ medical practitioner to vaccinate the citizens, etc.

4.—(1) The council of every city, town, township, and incorporated village, is hereby empowered and required, to contract with some legally qualified and competent medical practitioner, or practitioners, for the period of one year, and so from year to year, as such contract expires, for the vacci-

nation, at the expense of the municipality of all poor persons, and, at their own expense, of all other persons resident in such municipality, who come to such medical practitioner or practitioners for that purpose. R. S. O. 1877, c. 191, s. 5, (1); 47 V. c. 38, s. 63.

Remuneration to depend on success.

(2) It shall be a condition of every such contract, that the amount of the remuneration to be received under the same, shall depend on the number of persons who, not having been previously successfully vaccinated, are successfully vaccinated by such medical practitioner or medical practitioners respectively so contracting. R. S. O. 1877, c. 191, s. 5 (2).

Local board of health in default of municipality may employ a medical practitioner.

5. In case the council neglects to contract with some competent medical practitioner or practitioners for the vaccination of poor persons and others, as provided in the preceding section, and such neglect continues for one month after the attention of the council has been called in writing by the local board of health to such neglect, and to the powers which, in case of such neglect, the local board may exercise under the authority of this Act, the local board of health may contract with the medical health officer of the municipality, or other legally qualified medical practitioner or practitioners, to perform all the duties which may be performed, or are incumbent upon a medical practitioner under the said Act, if appointed or contracted with by the council under the preceding section, and the council shall be liable to the medical practitioner for the fees of vaccination or for duties performed to the extent provided for by this Act, as if the contract had been made by or with the council. The acts of the medical practitioner appointed by the local board of health, shall be as valid and operative in every respect as if a contract with him had been made by the council of the municipality; and in such case the local board of health may also, unless the municipal council has already done so, appoint the places and give the notice where and when such vaccination shall be performed, as is required by the next succeeding section, to be done by the council. 49 V, c. 43, s. 1.

City to appoint a convenient place in each ward for performance of vaccination.

6. The council of each city or town shall appoint a convenient place in each ward thereof, and the council of every township and incorporated village, shall appoint a convenient place therein, for the performance, at least once in each month, of such vaccination, and shall take effectual means for giving,

from time to time, to all persons resident within each such ward of the city or town, or within the township or village, due notice of the days and hours at which the medical practitioner or one of the medical practitioners contracted with for such purpose will attend, once at the least in each month at such place, to vaccinate all persons not successfully vaccinated who may then appear there, and also of the days and hours at which such medical practitioner will attend at such place to inspect the progress of such vaccination in the persons so vaccinated. R. S. O. 1877, c. 191, s. 6; 47 V. c. 38, s. 63.

Parents, etc., bound to take children to be vaccinated.

7.—(1) The father or mother of every child born in such city, town, township, or incorporated village, shall, at some appointed time, within three months after the birth of such child, or in the event of the death, illness, absence, or inability of the father and mother, then the person who has the care, nurture, or custody of the child, shall at some appointed time, within four months after the birth of the child, take, or cause to be taken, the child to the medical practitioner in attendance at the appointed place, according to the provisions of the preceding sections of this Act, for the purpose of being vaccinated, unless the child has been previously vaccinated by some legally qualified medical practitioner and the vaccination duly certified; and the medical practitioner so appointed shall, and he is hereby required, thereupon, or as soon after as it can conveniently and properly be done, vaccinate the child. R. S. O. 1877, c. 191, s. 7; 47 V. c. 38, s. 63.

(2) This section and the four succeeding sections shall also apply to all children over the age of three months becoming resident in a municipality, and such children shall for the purposes of the said sections be considered as children born in the municipality at the date that they became resident within it. 49 V. c. 43, s. 5.

And exhibit them to the medical practitioner on the eighth day.

8. Upon the eighth day following the day on which any child has been vaccinated as aforesaid, the father or mother, or other person having the care, nurture, or custody of the child as aforesaid, shall again take or cause to be taken the child to the medical practitioner by whom the operation was performed, or other similarly appointed medical practitioner in attendance as aforesaid, in order that the medical practitioner may ascertain by inspection the result of the operation. R. S. O. 1877, c. 191, s. 8.

Certificate of successful vaccination to be given.

9—(1) Upon and immediately after the successful vaccination of a child born in any city, town, township, or incorporated village, the medical practitioner who performed the operation shall deliver to the father or mother, or other person having the care, nurture or custody of the child as aforesaid, a certificate under his hand, according to the form of Schedule A to this Act, that the child has been successfully vaccinated, and shall also transmit a duplicate of the said certificate to the clerk of the municipality in which the operation was performed.

What to be evidence of.

(2) Such certificate shall, without further proof, be admissible as evidence of the successful vaccination of the child in any information or complaint brought against the father or mother of the child, or against the person who has had the care, nurture or custody of the child as aforesaid, for non-compliance with the provisions of this Act. R. S. O. 1877, c. 191, s. 9; 47 V. c. 38, s. 63.

If the child be found unfit for vaccination.

10—(1) If any medical practitioner appointed as aforesaid is of opinion that a child brought to him as aforesaid is not in a fit and proper state to be successfully vaccinated, he shall deliver to the father or mother of the child, or the person having the care, nurture or custody of the child as aforesaid on demand and without fee or reward, a certificate under his hand, according to the form of Schedule B to this Act, that the child is in an unfit state for successful vaccination.

Certificate.

How long to be in force.

(2) Such certificate or any similar certificate of a legally qualified medical practitioner, respecting any child born as aforesaid, shall remain in force for two months from its delivery; and the father or mother of the child, or the person having the care, nurture, or custody of the child as aforesaid, shall (unless they have within each succeeding period of two months obtained from a legally qualified medical practitioner a renewal of such certificate), within two months after the delivery of the said certificate as aforesaid, and if the child is not vaccinated at or by the termination of such period of two months, then during each succeeding period of two months until the child has been successfully vaccinated, take or cause to be taken to the medical practitioner, so appointed as aforesaid, such child to be vaccinated by him; and if the medical practitioner deems the child to be then in a fit and proper state for successful vaccination, he shall forthwith vacciuate it accordingly, and shall, upon

Re-presentation of the child to be repeated until successful vaccination.

or immediately after the successful vaccination of the child, deliver to the father or mother of the child, or the person having the care, nurture, or custody of the child as aforesaid, a certificate under his hand, according to the form of Schedule A to this Act, that the child has been successfully vaccinated; but if the medical practitioner is of opinion that the child is still in an unfit state for successful vaccination, then he shall again deliver to the father or mother of the child, or to the person having the care, nurture, or custody of the child, as aforesaid, a certificate under his hand, according to the form of Schedule B to this Act, that the child is still in an unfit state for successful vaccination, and the said medical practitioner, so long as the child remains in an unfit state for vaccination and unvaccinated, shall at the expiration of every succeeding period of two months, deliver, if required, to the father or mother of the child, or to the person having the care, nurture or custody of the child, a fresh certificate under his hand, according to the form of Schedule B to this Act.

Certificate.

Effect of certificate.

(3) The production of such certificate or of any similar certificate from any legally qualified medical practitioner, shall be a sufficient defence against any complaint brought against the father or mother, or person having the care, nurture or custody of such child, for non-compliance with the provisions of this Act. R. S. O. 1877, c. 191, s. 10.

If the child is found insusceptible of vaccine disease.

11. In the event of a medical practitioner employed under the provisions of this Act, or any other duly qualified medical practitioner being of opinion that any child that has been vaccinated by him, is insusceptible of the vaccine disease, he shall deliver to the father or mother of the child, or to the person having, as aforesaid, the care, nurture, or custody of the child, a certificate under his hand, according to the form of Schedule C to this Act; and the production of the certificate shall be a sufficient defence against any complaint which may be brought against the father or mother, or person having the care, nurture, or custody of the child, for non-compliance with the provisions of this Act. R. S. O. 1877, c. 191, s. 11.

Fees under this Act.

12. In all contracts to be made under the provisions of this Act, the sums contracted to be paid shall not be more than twenty-five cents for every person successfully vaccinated, including all or any of the certificates required by this Act. R. S. O. 1877, c. 191, s. 12.

Penalty for non-compliance with the requirements of this Act.

13. If a father or mother, or person so having as aforesaid the care, nurture or custody of any child as aforesaid, does not cause the child to be vaccinated within the periods prescribed by this Act, or does not on the eighth day after the vaccination has been performed take or cause to be taken the child for inspection according to the provisions in this Act respectively contained, then the father or mother, or person having the care, nurture or custody of the child as aforesaid, so offending, shall be liable to a penalty not exceeding $5, recoverable on summary conviction, before a Police Magistrate or any two Justices of the Peace, sitting and having jurisdiction in the municipality in which the offence was committed. R. S. O. 1877, c. 191, s. 13; 47 V. c. 38, s. 63.

How far and when plea of conviction shall avail.

14—(1) After the expiration of two months from the conviction of any person for an offence against this Act, in respect of any child, no plea of such conviction shall be sufficient defence against any complaint which may then be brought against the same or any other person for non-compliance with the provisions of this Act in respect of the same child.

(2) The production of a certificate in the form of schedule A or C, under the hand of a legally qualified medical practitioner, shall be a sufficient defence against such complaint; but the production of a certificate in the form of schedule B shall not be a sufficient defence, unless the vaccination is thereby postponed to a day subsequent to that on which the complaint is brought. R. S. O. 1877, c. 191, s. 14.

Enforcing vaccination.

15. In every municipality where smallpox exists, or in which, in the opinion of the provincial or municipal health authorities, there is danger of its breaking out owing to the facility of communication with infected localities, the council of the municipality may order the vaccination or re-vaccination of all persons resident in the municipality who have not been vaccinated within seven years, and that such vaccination or re-vaccination shall be carried out in so far as the same may be applicable in the same manner as for the vaccination of children, except that in the case of all persons of an age to make them legally responsible, they shall present themselves for vaccination by the medical practitioner, or some legally qualified practitioner, and the medical practitioner shall adopt the same measures to secure the vaccination or re-vaccination of all such persons, as he is required

to do with regard to children. A proclamation issued by the head of the municipality, and published in posters and in at least one newspaper published within the municipality, and in cases where there is no such newspaper, then in at least one newspaper in the county in which such municipality is situated, warning the public that this section of the Act is in force, shall be sufficient evidence to secure the conviction of any person who does not comply with the law within a period of seven days from the publication of the proclamation. 49 V. c. 43, s. 4.

School trustees may require certificates of vaccination.

16. It shall be lawful for the trustees of any public, separate or high school, to provide that no children shall be permitted to attend any school without producing a certificate of successful vaccination when demanded of him or her by the teacher. 49 V. c. 43, s. 2.

Students of high schools, etc., may be required to produce certificates of vaccination.

17. In all cases when it is deemed necessary by the medical health officer of any municipality, owing to the presence, or threatened presence of smallpox, he may, with the approval of the local board of health, require certificates of successful vaccination, or of insusceptibility on re-vaccination within seven years, of all students of high schools, collegiate institutes, colleges, and universities, within the municipality to be presented to the proper authorities of the said institutions, and no student refusing to present such certificate on demand, shall be admitted to further attendance on classes in said institution until such certificate is furnished. 49 V. c. 43, s. 3.

The license of the person contravening C. S. C. c. 39, s. 1, to become null.

18. If any person licensed to practise medicine, surgery, or midwifery in this Province is convicted of an offence against section 1 of chapter 39 of the Consolidated Statutes of Canada, entitled *An Act respecting Inoculation and Vaccination*, the license of such person in that behalf shall thereby become null and void and of no effect, and such person shall, from and after the date of such conviction, be liable to the same penalty in the event of his practising medicine, surgery or midwifery in Ontario, as he would have been liable to for so doing if he had never been licensed to practise the same; but it shall be lawful for the Lieutenant-Governor, on the certificate of the College of Physicians and Surgeons of Ontario, at any time after the expiration of the term of imprisonment of any such person so convicted as aforesaid, again to license such person to practise medicine, surgery, and midwifery as aforesaid, and thereupon and thereafter such person shall no longer be liable to any fine or penalty for so doing. R. S. O. 1877, c. 191, s. 15.

Proviso: license may be renewed, etc.

SCHEDULE A.

(Sections 9, 10, and 14.)

CERTIFICATE OF VACCINATION.

I, the undersigned, hereby certify that , the child of , aged , of Ward, in the City of (*or as the case may be*), has been successfully vaccinated by me.

(Signed), *A. B.*

Dated this day of , 18 .

R. S. O. 1877, c. 191, *Sched.* A.

SCHEDULE B.

(Sections 10 and 14.)

CERTIFICATE OF UNFITNESS FOR VACCINATION.

I, the undersigned, hereby certify that I am of opinion that , the child of , of Ward, in the City of (*or as the case may be*), aged , is not now in a fit and proper state to be successfully vaccinated, and I do hereby postpone the vaccination until the day of

(Signed), *A. B.*

Dated this day of , 18 .

R. S. O. 1877, c. 191, *Sched.* B.

SCHEDULE C.

(Sections 11 and 14.)

CERTIFICATE OF INSUSCEPTIBILITY TO VACCINE DISEASE.

I, the undersigned, hereby certify that I am of opinion that the child of , of Ward, in the City of (*or as the case may be*), is insusceptible of the vaccine disease

(Signed), *A. B.*

Dated this day of , 18 .

R. S. O. 1877, c. 191, *Sched.* C.

R. S. O. cap. 209. (*a*)

An Act for the protection of Infant Children.

RESTRICTIONS ON RECEIVING INFANTS TO BE NURSED FOR HIRE, s. 1.
REGISTRATION OF HOUSES UNDER THIS ACT, s. 2.
Refusal of registration, s. 3.
Removal from register, s. 7.
REGISTER OF INFANTS, ss. 4, 5.
OFFENCES, s. 6.
NOTICE OF DEATH OF INFANTS, s. 8.
INSPECTION OF REGISTERED HOUSES, s. 9.
PENALTIES, s. 10.
EXPENSES OF ENFORCING ACT, s. 11.
TRIAL OF OFFENCES, s. 12.
APPLICATION OF ACT, s. 13.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Restrictions as to receiving infants to be nursed for hire.

1. It shall not be lawful for any person to retain or receive for hire or reward more than one infant, and in case of twins more than two infants, under the age of one year, for the purpose of nursing or maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered as herein provided. 50 V. c. 36, s. 1.

Registration of houses for reception of infants.

2. The municipal council of every local municipality shall keep a register of the names of persons applying to register for the purposes of this Act, and therein shall cause to be registered the name and house of every person so applying, and the situation of the house : and the council shall from time to time make by-laws for fixing the number of infants who may be received into any and every house so registered. The registration shall remain in force for one year. No fee shall be charged for registration. Every person who receives or retains any infant in contravention to the provisions of this Act, shall be guilty of an offence against this Act. 50 V. c. 36, s. 2.

Authority to refuse registration.

3. The municipal council may refuse to register any house unless satisfied that the house is suitable for the purposes for which it is to be registered, and unless satisfied by the pro-

(*a*) R. S. O. caps. 207 and 208 are omitted, as they do no teonfer powers or impose duties upon municipal councils.

duction of the certificates that the person applying to be registered is of good character, and able to maintain such infants. 50 V. c. 36, s. 3.

Register of children.

4. The person registered as aforesaid, shall immediately enter in a register to be kept by him the name, sex, and age of every infant under his care, and the date at which, and the names and addresses of the persons from whom, they were received, and shall also enter in the said register the time when, and the names and addresses of the person by whom, every such infant received and retained as aforesaid shall be removed, immediately after the removal of the infant, and shall produce the register when required to do so by the municipal council; and in the event of his refusing so to produce the register, or neglecting to enter in a register the name, sex, and age of every infant, and the date at which and the names and addresses of the persons from whom they were received, and by whom they were removed respectively, shall be liable to a penalty not exceeding $20. 50 V. c. 36, s. 4.

Forms of registration to be supplied.

. The person registered shall be entitled to receive gratuitously from the municipal council, a book of forms for the registration of infants. This register may be in the form contained in the schedule to this Act. The book shall contain a printed copy of this Act. 50 V. c. 36, s. 5.

Offences.

6. If any person shall make false representations with a view to being registered under this Act, or shall forge any certificate for the purpose of this Act, or make use of any forged certificate knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act. 50 V. c. 36, s. 6.

Removal from register.

7. If it shall be shewn to the satisfaction of the municipal council that a person whose house has been so registered as aforesaid has been guilty of serious neglect, or is incapable of providing the infants entrusted to his care with proper food and attention, or that the house specified in the register has become unfit for the reception of infants, it shall be lawful for the municipal council to strike his name and house off the register. 50 V. c. 36, s. 7.

Notice of death of infant.

8. The person registered as aforesaid, shall within twenty-four hours after the death of every infant so retained or received, cause notice thereof to be given to the coroner for the district within which the infant died, and the coroner shall

hold an inquest on the body of the infant unless a certificate under the hand of a registered medical practitioner is produced to him by the person so registered certifying that such registered medical practitioner has personally attended or examined the infant, and specifying the cause of its death, and the coroner is satisfied by certificate that there is no ground for holding an inquest. If the person so registered neglects to give notice as aforesaid, he shall be guilty of an offence against this Act. 50 V. c. 36, s. 8.

Inspection.

9. It shall be the duty of the municipal council to provide for the visiting and inspecting, from time to time, of every house registered under this Act; and the persons or person appointed to inspect shall be entitled to enter the house at any time and to examine every part thereof, and to call for and examine the register which is required to be kept by the person registering the house; and to enquire into all matters concerning the house and the inmates thereof; and it shall be the duty of the person registered to give all reasonable information to persons making the inspection, and to afford them every reasonable facility for viewing and inspecting the premises, and seeing the inmates thereof. 50 V. c. 36, s. 9.

Penalties.

10. Every person guilty of an offence against this Act shall, on conviction thereof, forfeit and pay a penalty not exceeding $20 and costs, and in default of payment thereof, he shall be imprisoned in the common gaol of the county in which the offence was committed for a period of not less than six calendar months, and to be kept at hard labour, in the discretion of the Police Magistrate or other convicting Justices, and shall, in addition, be liable to have his name and house struck off the register. 50 V. c. 36, s. 10.

Expenses of enforcing Act.

11. All expenses incurred in and about the execution of this Act and the trial of offenders thereunder, shall be borne by the municipality in which the registered house is situated. 50 V. c. 36, s. 11.

Trial of offences.

12. Every offence against this Act shall be tried summarily before a Police Magistrate or any two Justices of the Peace having jurisdiction in the municipality in which the offence takes place, and all the provisions and powers as to summary trials contained in *The Act respecting Summary Proceedings before Justices of the Peace*, shall be applicable

R. S. C. 1886, c. 178.

to prosecutions and trials under this Act, and to the judicial and other officers before whom the same are hereby authorized to be brought, in the same manner, and to the same extent, as if such provisions and powers were incorporated in this Act. 50 V. c. 36, s. 12.

Application of Act.

14. The provisions of this Act shall not extend to the relatives or guardians of any infant retained or received as aforesaid, nor to benevolent and charitable institutions established for the protection or care of infants, and receiving aid from the Province or authorized by the Lieutenant-Governor to exercise the powers conferred by *The Act respecting Apprentices and Minors.* 50 V. c. 36, s. 13. Rev. Stat. c. 142.

Schedule.

(*Section 5.*)

REGISTER OF INFANTS.

Date at which received.	Name.	Sex.	Age	Name and address of person from whom received.	Date at which removed.	Name and address of person by whom removed.

50 V. c. 36, Sched.

R. S. O. cap. 210.

An Act to regulate the means of Egress from Public Buildings.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Doors of churches, etc., to be hung so as to open outwards.

1. In all churches, theatres, halls, or other buildings heretofore or hereafter constructed or used for holding public meetings, or for places of public resort (*a*) or amusement, all the doors shall be so hinged that they may open freely outwards, and all the gates of outer fences, if not so hinged, shall be kept open by proper fastenings during the time such buildings are publicly used, to facilitate the egress of people, in case of alarm from fire or other cause. (*b*) R. S. O. 1877, c. 192, s. 1.

Congregations incorporated and trustees holding for congregations under Rev. Stat. c. 237, and rectors, &c., holding under 3 V. c. 74, liable for neglecting the provisions of this Act.

2. Congregations possessing corporate powers, and all trustees holding churches or buildings used for churches under *The Act respecting the property of Religious Institutions*, and incumbents and churchwardens holding churches, or buildings used for churches under the Act of the Parliament of the late Province of Upper Canada, passed in the 3rd year of the reign of Her Majesty Queen Victoria, chapter 74, intituled *An Act to make provision for the management of the Temporalities of the United Church of England and Ireland in this Province, and for other purposes therein mentioned*, and all other persons holding churches or buildings used for churches, under any other Act, shall be severally liable, as trustees for such societies or congregations, to the provisions of this Act. R. S. O. 1877, c. 192, s. 2.

Individuals, companies and corporations liable to fine for neglecting the provisions of this Act.

3. Individuals, companies, and corporations, owning or possessing public halls, churches, or other buildings used for public meetings, who violate the provisions of this Act, shall be liable to a fine not exceeding $50, recoverable on infor-

(*a*) See also the "Act for the prevention of accidents by fire in hotels and other public buildings," 51 Vict. c. 34.

(*b*) See sec. 479, sub-s. 16 of the Municipal Act.

mation before any two of Her Majesty's Justices of the Peace, or before the mayor or Police Magistrate of any city or town; one moiety of such fine shall be paid to the party laying the information, and the other moiety to the municipality within which the case arises; and parties so complained against shall be liable to a further fine of $5 for every week succeeding that in which the complaint is laid, if the necessary changes are not made. R. S. O. 1877, c. 192, s. 3.

Duties of municipal officers.

4. In cities, towns, and incorporated villages, it shall be the duty of the high bailiff, chief constable, or chief of police, to enforce the provisions of this Act, and such officers neglecting the performance of such duties shall be liable to a fine not exceeding $50, recoverable in the manner and before the Justices of the Peace, and payable to the parties mentioned in the preceding section. R. S. O. 1877, c. 192, s. 4.

Officer to enforce this Act.

5. County and township municipalities may by by-law appoint an officer to enforce the provisions of this Act. R. S. O. 1877, c. 192, s. 5.

Not to apply to convents.

6. This Act shall not be construed to apply to convents or private chapels connected therewith. R. S. O. 1877, c. 192, s. 6. *See* Rev. Stat. 184, s. 479 (16).

R. S. O. cap. 214. (*a*)

An Act to impose a Tax on Dogs and for the Protection of Sheep.

TAX ON DOGS:
To be levied annually, unless otherwise provided by by-law, ss. 1-2.
Duty of assessors, s. 3.
Duty of owners of dogs, s. 4.
Collection of tax, ss. 5-6.
Tax to form a fund for paying damages for injury to sheep, unless otherwise provided by by-law, ss. 7-8.

PROTECTION OF SHEEP:
Dog worrying sheep may be killed, s. 9.
Plea to action for killing dog, s. 10.
Destruction of dog which has worried sheep, ss. 11-13.
Liability of owner of dog, ss. 14-16, 21.
Payment by municipal council for damage to sheep, ss. 17-20.
FEES AND RETURNS BY MAGISTRATES, s. 22.

HER MAJESTY by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

TAX ON DOGS.

Annual tax on dogs.

1. Subject to the provisions of the next section, there shall be levied annually in every municipality in Ontario, upon the owner of each dog therein, an annual tax of $1 for each dog and $2 for each bitch. (*b*) R. S. O. 1877, c. 194, s. 1.

Unless dispensed with by county by-law.

2—(1) In case the council of any county or union of counties deems it advisable to dispense with the levy of the said tax, it shall be lawful for such council to declare, by by-law that the said tax shall not be levied in any of the municipalities within its jurisdiction.

Tax may be restored by township by-law.

(2) Immediately upon the passing of such county by-law the council shall cause its clerk to transmit a copy of the same to the assessors of every municipality within its jurisdiction; and the county by-law shall have effect within every such municipality, unless the council thereof by by-law declares this Act to be in force therein, whereupon the

(*a*) Chapters 211-213 are omitted as they do not confer powers or impose duties on municipal councils. See, however, as to the construction of bridges over railways. Rev. Stat. c. 212, s. 4.

(*b*) See sub-s. 15 of sec. 489 of the Municipal Act.

county by-law shall not apply to or have any effect within such municipality. R. S. O. 1877, c. 194, s. 2.

Duty of assessors herein.

3. The assessors of every municipality within which this Act has not been dispensed with, as provided in the preceding section, shall, at the time of making their annual assessment, enter on the assessment roll, in a column prepared for the purpose, opposite the name of every person assessed, and also opposite the name of every resident inhabitant not otherwise assessed, being the owner or keeper of any dog or dogs, the number by him or her owned or kept. R. S. O. 1877, c. 194, s. **3**. *See* Rev. Stat. 191, s. 14 (3), & *Sched.* B.

Duty of owners of dogs.

Penalty.

4. The owner or keeper of any dog shall, when required by the assessors, deliver to them, in writing, the number of dogs owned or kept, whether one or more; and for every neglect or refusal to do so, and for every false statement made in respect thereof, shall incur a penalty of $5 to be recovered with costs before any Justice of the Peace for the municipality. R. S. O. 1877, c. 194, s. 4.

Tax entered on collector's roll.

5. The collector's roll of the municipality shall contain the name of every person entered on the assessment roll as the owner or keeper of any dog with the tax hereby imposed, in a separate column; and the collector shall proceed to collect the same, and at the same time and with the like authority, and make returns to the treasurer of the municipality, in the same manner, and subject to the same liabilities in all respects for paying over the same to the treasurer, as in the case of other taxes levied in the municipality. R. S. O. 1877, c. 194, s. 5.

Proceedings where collector has failed to collect taxes from parties assessed.

Penalty.

Penalty.

6. In cases where parties have been assessed for dogs, and the collector has failed to collect the taxes authorized by this Act, he shall report the same under oath to any Justice of the Peace, and such Justice shall, by an order under his hand and seal, to be served by any duly qualified constable, require such dogs to be destroyed by the owners thereof; (c) and if such owners neglect or refuse to obey the said order, they shall be liable to the penalty, to be recovered in the same way and manner as provided in section 15 of this Act; and in case any collector neglects to make the aforesaid report within the time required for paying over the taxes levied in the municipality, he shall be liable to a

(c) See sub-ss. 15 and 16 of sec. 489 of the Municipal Act.

penalty of $10 and costs, to be recovered in the same manner as provided in section 15 of this Act. R. S. O. 1877, c. 194, s. 6.

Tax to form fund for damages, etc.

7. The money collected and paid to the clerk or treasurer of any municipality under the preceding sections, shall constitute a fund for satisfying such damages as arise in any year from dogs killing or injuring sheep or lambs in such municipality; (*d*) and the residue, if any, shall form part of the assets of the municipality for the general purposes thereof; but when it becomes necessary in any year for the purpose of paying charges on the same, the fund shall be supplemented to the extent of the amount which has been applied to the general purposes of the municipality. R. S. O. 1877, c. 194, s. 7.

Provision for cases in which council maintains taxes, but does not apply proceeds thereof.

8.—(1) In case the council of any county or union of counties deems it advisable that the tax by this Act established should be maintained, but that the application of the proceeds thereof by this Act provided should be dispensed with, it shall be lawful for such council by by-law to declare that such application shall be dispensed with; and thereafter during the continuance of such by-law, the sections of this Act numbered 6, 7, and 15 to 21 inclusive shall have no force or effect in any of the municipalities within the jurisdiction of such council; and the moneys collected and paid to the clerk or treasurer of any such municipality, under the remaining sections of this Act shall be the property of such municipality, and shall be subject to its disposition in like manner as other local taxes. R. S. O. 1877, c. 194, s. 8.

Township may pass by-law to apply proceeds of taxes in payment for sheep.

(2) Immediately upon the passing of such county by-law the council shall cause its clerk to transmit a copy of the same to the clerk of every municipality within its jurisdiction, and the county by-law shall have effect within every such municipality, unless the council thereof by by-law declares this Act to be in force therein, whereupon the said county by-law shall not apply to or have any effect within such municipality. 47 V. c. 40, s. 1.

PROTECTION OF SHEEP.

Dogs seen worrying sheep may be killed.

9. Any person may kill any dog which he sees pursuing, worrying or wounding any sheep or lamb. R. S. O. 1877, c. 194, s. 10.

(*d*) See sec. 18.

Plea to action for killing a dog.

10. The defendant in any action of damages for killing a dog under the circumstances in the preceding section mentioned, may plead not guilty by statute and give this Act and the special matter in evidence. R. S. O. 1877, c. 194, s. 11.

Persons owning dogs addicted to worrying may be summoned before a Justice of the Peace.

11. On complaint made in writing on oath before a Justice of the Peace for any city, town or county, or union of counties, that any person residing in such city, town or county, or union of counties, owns or has in his possession a dog which has within six months previous worried and injured or destroyed any sheep, the Justice of the Peace may issue his summons, directed to such person, stating shortly the matter of the complaint, and requiring such person to appear before him, at a certain time and place therein stated, to answer to such complaint, and to be further dealt with according to law. R. S. O. 1877, c. 194, s. 12.

Proceedings, how regulated. Rev. Stat. c. 74.

12. The proceedings on the complaint and summons shall be regulated by *The Act respecting Summary Convictions before Justices of the Peace and Appeals to General Sessions*, which shall apply to cases under this Act. R. S. O. 1877, c. 194, s. 13.

On conviction of the fact, dog to be ordered to be destroyed and owner fined.

13. In case any person is convicted, on the oath of a credible witness, of owning or having in his possession a dog which has worried and injured or destroyed any sheep, the Justice of the Peace may make an order for the killing of such dog (describing the same according to the tenor of the description given in the complaint and in the evidence) within three days and in default thereof may in his discretion impose a fine upon such person, not exceeding $20 with costs; and all penalties imposed under this section shall be applied to the use of the municipality in which the defendant resides. R. S. O. 1877, c. 194, s. 14.

Conviction no bar to action for damages.

14. No conviction under this Act shall be a bar to any action by the owner or possessor, as aforesaid, of any sheep for the recovery of damages for the injury done to such sheep, in respect of which such conviction is had. R. S. O. 1877, c. 194, s. 15.

Extent of liability of owner or keeper of dog.

15.—(1) The owner of any sheep or lamb killed or injured by any dog shall be entitled to recover the damage occasioned thereby from the owner or keeper of such dog, by an action for damages or by summary proceedings before a Justice of the Peace, on information or complaint before such Justice

who is hereby authorized to hear and determine such complaint, and proceed thereon in the manner provided by *The Act respecting Summary Convictions before Justices of the Peace and Appeals to General Sessions*, in respect to proceedings therein mentioned; and such aggrieved party shall be entitled so to recover on such action or proceedings, whether the owner or keeper of such dog knew or did not know that it was vicious or accustomed to worry sheep. R. S. O. 1877, c. 194, s. 16.

Rev. Stat. c. 74.

Apportionment of damage.

(2) If it shall appear before the Court or Judge at the trial of any such action for damages or before such Justice at the hearing of the said information or complaint before him, that the damage or some part of the damage sustained by such aggrieved party was the joint act of some other dog or dogs, and of the dog or dogs owned or kept by the person charged in such information or complaint, the Court, Judge or Justice shall have power to decide and apportion the damages sustained by the complainant, among and against the respective owners or keepers of the said dogs, as far as such owners or keepers are known, in such shares and proportions as such Court, Judge, or Justice shall think fit, and to award the same by the judgment of the said Court or Judge, or in the conviction of such Justice, on behalf of such aggrieved person.

(3) When in the opinion of the Court, Judge, or Justice, the damages were occasioned by dogs the owner or owners of which are known, and dogs the owner or owners of which are unknown, or the owner or owners of which have not been summoned to appear before the Court, Judge, or Justice, the Court, Judge, or Justice may decide and adjudge as to the proportion of the damages which, having regard to the evidence adduced as to the strength, ferocity and character of the various dogs shewn to have been engaged in committing such damage, was probably done by the dogs the owner or owners of which have been summoned to appear before the Court, Judge, or Justice, and shall determine in respect thereof and apportion the damage which the Court, Judge, or Justice decides to have been probably done by the dogs whose owners have been summoned, amongst the various owners who have been summoned as aforesaid.

(4) The same proceedings shall be thereupon had against any person found by the Judge or Justice to be the owner or keeper of the dog or dogs which by such Court, Judge, or

Justice shall have been found to have contributed to the damage sustained by the person aggrieved, as if the information or complaint had been laid in the first instance against such person.

(5) The Court, Judge, or Justice shall not decide and apportion the damage against any person other than the person in the information or complaint first charged, nor award the same in the judgment or conviction without such other person having been summoned to appear before the Court, Judge, or Justice, and having had an opportunity of calling witnesses.

(6) Appeals against any conviction, apportionment, or order made under this section, shall be made to the Division Court holden in the division in which the cause of action arose, or in which the party complained against, or one of them, resided at the time of making the complaint; and the proceedings shall be the same as nearly as may be, as on appeals under *The Act respecting Master and Servant.* 48 V. c. 46, s. 1. Rev. Stat. c. 139.

16. The owner or keeper of any dog or dogs, to whom notice is given of any injury done by his dog or dogs to any sheep or lamb, or of his dog or dogs having chased or worried any sheep or lamb, shall, within forty-eight hours after such notice, cause such dog or dogs to be killed; and for every neglect so to do he shall forfeit a sum of $2.50 for each such dog, and a further sum of $1.25 for each such dog for every forty-eight hours thereafter, until the same is killed, if it is proved to the satisfaction of the Justice of the Peace before whom proceedings are taken for the recovery of such penalties, that such dog or dogs has or have worried or otherwise injured such sheep or lamb; but no such penalties shall be enforced in case it appears to the satisfaction of the Justice of the Peace that it was not in the power of the owner or keeper to kill such dog or dogs. R. S. O. 1877, c. 194, s. 17. Dogs known to worry sheep to be killed by owner. Penalty. Proviso. Proviso.

17. In case the owner of any sheep or lamb so killed or injured proceeds against the owner or keeper of the dog that committed the injury, before a Justice of the Peace, as provided by this Act, and is unable on the conviction of the offender, to levy the amount ordered to be paid, for want of sufficient distress to levy the same, then the council of the municipality in which the offender resided at the time of the injury shall order their treasurer to pay to the aggrieved Provision for cases where there is a conviction, but distress insufficient.

party the amount ordered to be paid by the Justice under the conviction, saving and excepting the costs of the proceedings before the Justice and before the council. R. S. O. 1877, c. 194, s. 18.

Provision for cases in which owner of dog not known.

18. The owner of any sheep or lamb killed or injured by any dog, the owner or keeper of which is not known, may within three months apply to the council of the municipality in which such sheep or lamb was so killed or injured, for compensation for the injury; and if the council (any member of which shall be competent to administer an oath or oaths in examining parties in the premises) is satisfied that the aggrieved party has made diligent search and inquiry to ascertain the owner or keeper of such dog, and that such owner or keeper cannot be found, they shall award to the aggrieved party for compensation a sum not exceeding two-thirds of the amount of the damage sustained by him; and the treasurer of the municipality shall pay over to him the amount so awarded. (*e*) R. S. O. 1877, c. 194, s. 19.

After compensation paid by municipality claims to belong to them.

19. After the owner of such sheep or lamb has received from the municipality any money under either of the preceding sections, his claim shall thenceforth belong to the municipality; and they may enforce the same against the offending party for their own benefit, by any means or form of proceeding that the aggrieved party was entitled to take for that purpose, but in case the municipality recovers from the offender more than they had paid to the aggrieved party, besides their costs, they shall pay over the excess to the aggrieved party for his own use. R. S. O. 1877, c. 194, s. 21.

Proviso.

Cases where owner of sheep, etc., has no compensation.

20. The owner of any sheep or lamb killed or injured while running at large upon any highway or unenclosed land, shall have no claim under this Act to obtain compensation from any municipality. R. S. O. 1877, c. 194, s. 21.

Liability of dog owner to sheep owner where tax not imposed.

21. If the council of any county or union of counties, by by-law, decides to dispense with the levy of the aforesaid tax in the municipalities within its jurisdiction, the owner of any sheep or lamb may, notwithstanding, sue the

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(*e*) These provisions are not confined to county municipalities and to municipalities within their jurisdiction, but apply also to towns which have withdrawn from the jurisdiction of the county. *Williams* v. *Port Hope*, 27 U. C. C. P. 548. See also sec. 7.

owner or keeper of any dog or dogs for the damage or injury done by the said dog or dogs to the said sheep or lamb; and the same shall be recovered in the manner provided by section 15 of this Act. R. S. O. 1877, c. 194, s. 22.

Fees and returns by Justices.

22. Every Justice of the Peace shall be entitled to charge such fees in cases of prosecutions or orders under this Act as it is lawful for him to charge in other cases within his jurisdiction, and he shall make the returns usual in cases of conviction, and also a return in each case to the clerk of the municipality, whose duty it shall be to enter the same in a book to be kept for that purpose. R. S. O. 1877, c. 194, s. 23.

R. S. O. cap. 215.

An Act respecting Pounds.

ACT TO BE IN FORCE UNTIL SUPERSEDED BY BY-LAW, s. 1.
LIABILITY OF OWNER OR OCCUPANT, s. 2.
ANIMALS WHICH MAY BE IMPOUNDED, s. 3.
Where to be confined if pound insecure, s. 4.
Release on security being furnished, s. 5.
STATEMENT OF DEMAND TO BE FURNISHED TO POUND-KEEPER, s. 5.
WHEN DISTRAINOR MAY DETAIN ANIMAL, s. 6.
Notice by distrainor in such case, ss. 7-10.
NOTICE OF SALE, ss. 11-13.
KEEPER TO FEED IMPOUNDED ANIMALS, s. 14.
Recovery of expenses, ss. 15-18.
SALE OF ANIMAL NOT REDEEMED OR REPLEVIED, s. 18.
PROCEEDINGS WHEN DAMAGES DISPUTED, ss. 19-21.
PENALTIES;
Neglect to feed impounded animals, s. 22.
Neglect of duty by fence viewers, s. 23.
Recovery, s. 24.
Application, s. 25.

HER MAJESTY, by and with the advice and consent of the Legislative Assemlly of the Province of Ontario, enacts as follows:—

Act may be superseded by by-laws

1. Until varied or other provisions are made by by-laws passed under the authority of section 490 of *The Municipal*

under Rev. Stat. c. 184, s. 490.

Act, this Act shall be in force in every township, city, town, and incorporated village in Ontario. (*a*) R. S. O. 1877, c. 195, s. 1.

Liability for damage done.

2. The owner or occupant of any land shall be responsible for any damage or damages caused by any animal or animals under his charge and keeping, as though such animal or animals were his own property, and the owner of any animal not permitted to run at large by the by-laws of the municipality, shall be liable for any damage done by such animal, although the fence enclosing the premises was not of the height required by such by-laws. R. S. O. 1877, c. 195, s. 2.

What animals to be impounded.

3. If not previously replevied, the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig, or other cattle, geese or other poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same; or if the owner of geese or other poultry refuses or neglects to prevent the same from trespassing on his neighbours' premises after a notice in writing has been served upon him of their trespass, then the owner of such poultry may be brought before any Justice of the Peace and fined such sum as the Justice directs. R. S. O. 1877, c. 195, s. 3.

Poultry.

When the common pound is not safe.

4. When the common pound of the municipality or place wherein a distress has been made is not secure, the pound-keeper may confine the animal in any enclosed place within the limits of the pound-keeper's division within which the distress was made. R. S. O. 1877, c. 195, s. 4.

Statement of demand to be made to pound-keeper by impounder.

5. The owner of any animal impounded shall at any time be entitled to his animal, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the pound-keeper for all costs, damages, and poundage fees that may be established against him, but the person distraining and impounding the animal shall, at the time of the impounding, deposit poundage fees, if such are demanded, and within twenty-four hours thereafter deliver to the pound-keeper duplicate statements in writing of his demands against the owner for damages (if any), not exceeding $20, done by

(*a*) See note *j* to sec. 490 of the Municipal Act.

such animal, exclusive of such poundage fees, and shall also give his written agreement (with a surety if required by the pound-keeper) in the form following, or in words to the same effect :

Form of agreement with pound-keeper.

"I (*or* we, *as the case may be*) do hereby agree that I (*or* we) will pay to the owner of the (*describing the animal*) by me (*A. B*) this day impounded, all costs to which the said owner may be put in case the distress by me the said *A. B.* proves to be illegal, or in case the claim for damages now put in by me the said *A. B.* fails to be established."

R. S. O. 1877, c. 195, s. 5.

When animal may be retained by distrainor.

6. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same is distrained by a resident of the municipality for straying within his premises, such person, instead of delivering the animal to a pound-keeper, may retain the animal in his own possession, provided he makes no claim for damages done by the animal, and duly gives the notice hereinafter in that case required of him. R. S. O. 1877, c. 195, s. 6.

Notice to owner if known.

7. If the owner is known to him, he shall forthwith give to the owner notice in writing of having taken up the animal. R. S. O. 1877, c. 195, s. 7.

If unknown, notice to clerk of municipality.

8. If the owner is unknown to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the clerk of the municipality, a notice in writing of having taken up the animal, and containing a description of the colour, age, and natural and artificial marks of the animal, as near as may be. R. S. O. 1877, c. 195, s. 8.

Duty of clerk thereon.

9. The clerk, on receiving such notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he receives, or copy thereof, in some conspicuous place, on or near the doors of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner. R. S. O. 1877, c. 195, s. 9.

If the animals are worth $10 or over.

10. If the animal or any number of animals taken up at the same time is or are of the value of $10 or more, the distrainor shall cause a copy of the notice to be published in a newspaper in the county, if one is published therein, and if not, then in a newspaper published in an adjoining county,

and to be continued therein once a week for three successive weeks. R. S. O. 1877, c. 195, s. 10.

Notice of sale

11. In case an animal is impounded, notices for the sale thereof shall be given by the pound-keeper or person who impounded the animal within forty-eight hours afterwards, but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same. R. S. O. 1877, c. 195, s. 11.

When sale may be made.

If animal is not impounded, but retained.

12. In case the animal is not impounded, but is retained in the possession of the party distraining the same, if the animal is a pig, goat, or sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or other cattle, the notices shall not be given for two months after the animal is taken up. R. S. O. 1877, c. 195, s. 12.

Notice of sale unless redeemed.

13. The notices of sale may be written or printed, and shall be affixed, and continued for three clear successive days, in three public places in the municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the pound-keeper, and also of the fence-viewers (if any); and the expenses of the animal's keeping. R. S. O. 1877, c. 195, s. 13.

Keeper to feed impounded cattle.

14. Every pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound or in any open or close pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined. R. S. O. 1877, c. 195, s. 14.

And may recover the value

15. Every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises. R. S. O. 1877, c. 195, s. 15.

In what manner such value

16. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any Justice

of the Peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties or forfeitures for the breach of any by-law of the municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of pound-keepers' fees and charges established by the by-laws of the municipality. R. S. O. 1877, c. 195, s. 16. may be recovered.

17. The pound-keeper, or person so entitled to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned. R. S. O. 1887, c. 195, s. 17. Other mode of enforcing.

18. In case it is proved by affidavit before one of the Justices aforesaid, to his satisfaction, that all the proper notices had been duly affixed and published in the manner and for the respective times above prescribed, then if the owner or some one for him does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the pound-keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any pound-keeper, but retained the same in his own possession, then any pound-keeper of the municipality may publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages (if any) and fees and charges, shall apply the product in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable (not exceeding $20,) to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the pound-keeper shall pay such surplus to the treasurer of and for the use of the municipality. R. S. O. 1877, c. 195, s. 18. Sale, how effected, etc., and purchase money, how applied.

19. If the owner, within forty-eight hours after the delivery of such statements, as provided in section 5, disputes the amount of the damages so claimed, the amount Disputes regarding demand for damages, how determined.

shall be decided by the majority of three fence-viewers of the municipality one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the pound-keeper. R. S. O. 1877, c. 195, s. 19.

Fence-viewer to view and appraise damage.

20. Such fence-viewers or any two of them shall within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass; and if it was a lawful fence, then they shall appraise the damages committed, and, within twenty-four hours after having made the view, shall deliver to the pound-keeper a written statement signed by at least two of them of their appraisement and of their lawful fees and charges. R. S. O. 1877, c. 195, s. 20.

Proceedings where fence-viewers decide against the legality of a fence.

21. It the fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the pound-keeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the pound-keeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices. R. S. O. 1877, c. 195, s. 21.

Liability of pound-keeper refusing to feed animal impounded.

22. In case a pound-keeper or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide and supply the animal with good and sufficient food, water and shelter as aforesaid, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than $1 nor more than $4. R. S. O. 1877, c. 195, s. 22.

Penalty for neglect of duty by fence-viewers.

23. Any fence-viewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of $2, to be recovered for the use of the municipality, by summary proceedings before a Justice of the Peace upon the complaint of the party aggrieved or the treasurer of the municipality. R. S. O. 1877, c. 195, s. 23.

Recovery and enforcement of penalties.

24. Every fine and penalty imposed by this Act may be recovered and enforced, with costs, by summary conviction, before any Justice of the Peace for the county or of the

municipality in which the offence was committed; and in default of payment the offender may be committed to the common gaol, house of correction, or lock-up house of the county or municipality, there to be imprisoned for any time in the discretion of the convicting and committing Justice, not exceeding fourteen days, unless the fine and penalty, and costs, including the costs of the committal, are sooner paid. R. S. O. 1877, c. 195, s. 24. Imprisonment in default of payment.

25. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner: one moiety to the city, town, village or township in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice seems proper. R. S. O. 1877, c. 195, s. 25. Application of penalties.

R. S. O. cap. 218. (a)

An Act respecting abandoned Oil Wells.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1.—(1) If the working of any oil well is retarded or injured by the water existing in or flowing into any abandoned oil well in the vicinity of the well so injured, it shall and may be lawful for the owner of the well so injured to apply to the municipal council of the municipality in which the abandoned well is situated, for the purpose of being allowed by the council to either fill up the abandoned well, Owner of well injured may apply to municipal councils to fill up abandoned wells.

(a) Chapters 216 and 217 are omitted as they do not confer powers or impose duties on municipal councils.

or in some other effectual way to shut off the water flowing therein.

Powers of the council.

(2) The council shall, upon such application being made in writing by the person injured or aggrieved, briefly setting forth the grievance, order some engineer or other competent person to examine the said abandoned well, and after such examination to report to the said council in writing whether in his opinion the person complaining is injured as alleged, and whether the said abandoned well should be filled up, or the water flowing therein shut off in some other and what manner. R. S. O. 1877, c. 197, s. 1.

If engineer reports a well should be filled up, owners thereof to be notified.

2. In case the engineer or other competent person reports to the council that in his opinion the abandoned well so complained of should be filled up, or that the water flowing therein should be shut off in some other way, the clerk of the council shall mail to the owner or owners of the abandoned well, or to some one of such owners, or to his or their agent in charge of the premises where the abandoned well is situate, a copy of the report, with a notice in writing signed by said clerk, stating that unless said abandoned well is filled up or the water flowing therein is effectually shut off in accordance with the opinion contained in the said report, that the person complaining will proceed to do the work as provided in the next section. R. S. O. 1877, c. 197, s. 2.

Cases wherein complainant may fill up.

3. If the abandoned well is not filled up, or the water flowing therein otherwise shut off in accordance with the opinion contained in said report, within twenty days from the time of the mailing of the said notice, then it shall be lawful for the person complaining to proceed to the filling up of the said abandoned well, or the shutting off of the water flowing therein, in accordance with the terms of the said report; and no action for damages shall lie or be maintainable against the person, his servants or agents, for so doing. R. S. O. 1877, c. 197, s. 3.

R. S. O. cap. 219. (a)

An Act respecting Line Fences.

SHORT TITLE, s. 1.
INTERPRETATION, s. 2.
DUTY OF ADJOINING OWNERS, s. 3.
PROCEEDINGS IN CASE OF DISPUTE, ss. 4-6.
AWARD BY FENCE VIEWERS:
Contents of award, s. 7.
Filing, s. 8.
Enforcing, s. 9.
Registration, s. 10.
Fees, s. 11.
APPEAL TO COUNTY JUDGE, s. 12.
ENFORCING AGREEMENTS, s. 13.
REMOVAL OF LINE FENCES, s. 14.
TREES FALLING ON LINE FENCES, s. 15.
FORMS, s. 16.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The Line Fences Act.*" R. S. O. 1877, c. 198, s. 1. Short title.

2.—(1) In this Act the expression "occupied lands" shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation. 41 V. c. 10, s. 1. Interpretation: "Occupied lands;"

(2) Where, within the meaning of section 4 of this Act, there is any dispute between owners or occupants of lands situate in different municipalities, the following words or expressions in this Act shall have the meaning hereinafter expressed, namely :

1. The phrase "Fence-viewers" shall mean two fence-viewers of the municipality in which is situate the land of the owner or occupant notified under sub-section 1 of section 4 of this Act, and one fence-viewer of the municipality in which is situate the land of the party or person giving the notice; except that in case of a disagreement having occurred within the meaning of sub-section 4 of section 4, the said phrase "Fence-viewers" shall mean fence-viewers from either or both municipalities. "Fence-viewers;"

(a) The amendment made to section 11 by 52 V. c. 48 is introduced into this Act.

"In which the lands are situate;" "In which the land lies."

2. The expression "in which the lands are situate" and the expression "in which the land lies," shall respectively mean in which are situate the lands of the owner or occupant so notified under sub-section 1 of section 4. 47 V. c. 42, s. 1.

Duties of owners of adjoining lands as to fences.

3. Owners of occupied adjoining lands shall make, keep up, and repair a just proportion of the fence which marks the boundary between them, or if there is no fence they shall so make, keep up, and repair the same proportion which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands shall, upon their being occupied, be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned. R. S. O. 1877, c. 198, s. 2.

Disputes between owners, how to be settled.

4. In case of dispute between owners respecting such proportion, the following proceedings shall be adopted:

Notice to owner or occupant of adjoining land.

1. Either owner may notify (Form 1) the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three fence-viewers of the locality to arbitrate in the premises.

And to fence-viewers.

2. The owners so notifying shall also notify (Form 2) the fence-viewers, not less than one week before their services are required.

What to contain.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat; or in case of the lands being untenanted, by leaving the notice with any agent of such owner.

When Judge to appoint fence-viewers.

4. The owners notified may, within the week, object to any or all of the fence-viewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the fence-viewers who are to arbitrate. R. S. O. 1877, c. 198, s. 3.

Duty and liability of occupants as

5. An occupant, not the owner of land notified in the manner above mentioned, shall immediately notify the owner;

and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. R. S. O. 1877, c. 198, s. 4. to notifying owners.

6. The fence-viewers shall examine the premises, and if required by either party they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation for the purpose as in Courts of law. R. S. O. 1877, c. 198, s. 5. Duties and powers of fence-viewers.

7.—(1) The fence-viewers shall make an award (Form 3) in writing signed by any two of them, respecting the matters so in dispute; which award shall specify the locality, quantity, description, and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or in what proportion the same shall be paid to the parties. Award of fence-viewers. Contents.

(2) In making the award, the fence-viewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally, the suitableness of the fence ordered to the wants of each party. Character of fence.

(3) Where, from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the fence-viewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it seems to be most convenient; but such location shall not in any way affect the title to the land. Location of fence.

(4) If necessary, the fence-viewers may employ a provincial land surveyor, and have the locality described by metes and bounds. R. S. O. 1877, c. 198, s. 6. Employment of surveyor.

8. The award shall be deposited in the office of the clerk of the council of the municipality in which the lands are situate, and shall be an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents; and notice of its being made shall be given to all parties interested. R. S. O. 1877, c. 198, s. 7. Deposit of award. Award may be evidence. Notification of award.

9. The award may be enforced as follows: The person desiring to enforce it shall serve upon the owner or occupant Award, how enforced.

of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of the notice, the person so desiring to enforce it may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the Judge of the Division Court may on application of either party, extend the time for making the fence to such time as he may think just. R. S. O. 1877, c. 198, s. 8.

Award to be a charge on lands, if registered.

10.—(1) The award shall constitute a lien and charge upon the lands respecting which it is made, when it is registered in the registry office of the registry division in which the lands are.

How registered.

(2) Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of *The Registry Act*. R. S. O. 1877, c. 198, s. 9.

Rev. Stat. c. 114.

Fees to fence-viewers, surveyors and witnesses.

11. (1) The fence-viewers shall be entitled to receive $2 each for every day's work under this Act: Provincial land surveyors and witnesses shall be entitled to the same compensation as if they were subpœnaed in any Division Court. R. S. O. 1877, c. 198, s. 10.

(2) The municipality may at the expiration of the time for appeal, or after appeal, as the case may be, pay to the fence viewers their fees, and shall, unless the same be forthwith repaid by the person awarded or adjudged to pay the same place the amount upon the collector's roll as a charge against the person awarded or adjudged to pay the same, and the same shall thereafter be placed upon the collector's roll and may be collected as ordinary municipal taxes. 52 V. c. 48, s. 1.

Appeals.

12. Any person dissatisfied with the award made, may appeal therefrom to the Judge of the County Court of the county in which the lands are situate, and the proceedings on the appeal shall be as follows:

Notice of appeal.

1. The appellant shall serve upon the fence-viewers, and all parties interested, a notice in writing of his intention to appeal, within one week from the time he has been notified of the award, which notice may be served as other notices mentioned in this Act.

2. The appellant shall also deliver a copy of the notice to the clerk of the Division Court of the division in which the land lies, and the clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said clerk as will be a sufficient indemnity against costs of the appeal. To clerk.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the clerk, who shall notify the fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act. Notice of hearing.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, may inspect the premises; and may order payment of costs by either party, and fix the amount of such costs. Powers of the judge.

5. His decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. Decision of judge to be final.

6. The practice and proceedings on the appeal, including the fees payable for subpœnas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the Division Court. R. S. O. 1877, c. 198, s. 11.

13. Any agreement in writing (Form 4) between owners respecting such line fence may be filed or registered and enforced as if it was an award of fence-viewers. R. S. O. 1877, c. 198, s. 12. Registration of agreements.

14. (1) The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence— Owner of division fence which in part encloses another person's land not to remove same except upon notice, etc.

(*a*) Without giving at least six months previous notice of his intention to the owner or occupier of such adjacent enclosure;

(*b*) Nor unless such last mentioned owner or occupier after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum determined as provided in section 7 of this Act;

(c) Nor if such owner or occupier will pay to the owner of such fence or of any part thereof, such sums as the fence-viewers may award to be paid therefor under section 7 of this Act.

Provisions of this Act to apply to cases under this section.

(2) The provisions of this Act relating to the mode of determining disputes between the owner of occupied adjoining lands, the manner of enforcing awards and appeals therefrom, and the schedules of forms attached hereto, and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. R. S. O. 1877, c. 198, s. 13.

Provision, when a tree is thrown down across a line fence.

15—(1) If any tree is thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the property adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree.

When injured party may remove tree.

(2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree, from the party liable to pay it under this Act.

Entry to remove tree not to be a trespass, etc.

(3) For the purposes of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing.

Fence-viewers to decide disputes.

(4) All disputes arising between parties relative to this section, and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by three fence-viewers of the municipality, two of whom shall agree. R. S. O. 1877, c. 198, s. 14.

Forms.

16. The forms in the schedule hereto are to guide the parties, being varied according to circumstances. R. S. O. 1877, c. 198, s. 15.

SCHEDULE OF FORMS.

FORM 1.

(*Section* 4.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. , Mr. and Mr. , three fence-viewers of this locality, will attend on the day of, , 18 , at the hour of , to view and arbitrate upon the line fence in dispute between our properties, being lots (*or* parts of lots) *One* and *Two* in the concession of the township of , in the county of .

Dated this day of , 18 .

A. B.,
Owner of Lot 1.

To *C. D.*,
Owner of Lot 2.

R. S. O. 1877, c. 198, *Sched.* Form 1.

FORM 2.

(*Section* 4.)

NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at on the day of , A.D. 18 , at o'clock, A.M., to view and arbitrate on the line fence between my property and that of Mr. , being lots (*or* parts of lots) Nos. *One* and *Two* in the concession of the township of , in the county of .

Dated this day of , 18 .

A. B.,
Owner of Lot 1.

R. S. O. c. 198, *Sched.* Form 2.

FORM 3.

(*Section* 7.)

AWARD.

We, the fence-viewers of (*name of the locality*), having been nominated to view and arbitrate upon the line fence between of (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe properties*), and having examined the premises and duly acted according to *The Line Fences Act*, do award as follows: That part of the said line which commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by the said , and that part thereof which commences at and ends at (*describ, the points*) shall be fenced, and the fence maintained by the said . The fence shall be of the following description (*state the kind of fencee height, material, etc.*), and shall cost at least per rod. The work shall be commenced within days, and completed within

days from this date, and the costs shall be paid by (*state by whom paid; if by both, in what proportion.*).

Dated this day of , 18 .

(*Signatures of fence-viewers.*)

R. S. O. 1877, c. 198, *Sched.* Form 3.

FORM 4.

(*Section* 13.)

AGREEMENT.

We, and , owners respectively of lots (*or* parts of lots) *One* and *Two* in the concession of the township of , in the county of , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: (*follow the same form as award.*)

Dated this day of 18 .

(*Signatures of parties.*)

R. S. O. 1877, c. 198, *Sched.* Form 4.

R. S. O. cap. 220. (*a*)

An Act respecting Ditches and Watercourses.

SHORT TITLE, s. 1.
APPOINTMENT OF ENGINEER, s. 2.
APPLICATION OF ACT, s. 3.
DUTY OF ADJOINING OWNERS, s. 4.
PROCEEDINGS WHERE ADJOINING OWNERS DISAGREE, ss. 5-7.
DUTIES OF ENGINEER, ss. 8, 9.
Award of engineer to be filed, s. 10.
APPEAL FROM AWARD, s. 11.
Compelling attendance of witnesses on appeal, s. 12.
PAYMENT TO CONTRACTOR, s. 13.
INSPECTION OF WORK, ss. 15-17.
COLLECTION AND PAYMENT OF COSTS AND FEES, ss. 14-18.
SERVICE OF NOTICES, s. 19.
ACT TO APPLY TO MUNICIPAL CORPORATIONS, s. 20.
POWER AS TO COVERING DRAINS, ss. 21-24.
USE OF DRAIN BY SUBSEQUENT PARTIES, s. 25.
CONTINUATION OF DRAIN INTO ADJOINING MUNICIPALITY, s. 26.
SCALE OF FEES, s. 27.
ACT TO APPLY TO DEEPENING OR WIDENING A DITCH OR DRAIN, s. 28.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

(*a*) The amendments made by 52 V. c. 49, are introduced into this Act.

Short title.

1. This Act may be cited as "*The Ditches and Watercourses Act.*" 46 V. c. 27, s. 1.

Engineer appointment of.

2—(1) Every municipal council shall name and appoint by by-law an engineer to carry out the provisions of this Act, and such engineer shall be and continue an officer of such corporation until his appointment is repealed by by-law and another engineer appointed in his stead, who shall have authority as well to take as to continue any proceeding already commenced under this Act.

(2) The word "engineer" in this Act shall mean civil engineer, land surveyor, or such person as any municipality may deem competent to perform the duties required under this Act. 46 V. c. 27, ss. 4, 21.

Certain Acts not affected.

3. This Act shall not affect the Acts relating to municipal or government drainage. 46 V. c. 27, s. 2.

Owners of adjoining lands to construct ditches in certain proportions

4—(1) In case of owners of lands, (*b*) whether immediately adjoining or not, which would be benefited by making a ditch or drain or by deepening or widening a ditch or drain already made in a natural watercourse, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water or in order to enable the owners or occupiers thereof the better to cultivate or use the same, such several owners shall open and make, deepen or widen a just and fair proportion of such ditch or drain according to their several interests in the construction of the same; and such ditches or drains shall be kept and maintained so opened, deepened or widened by the said owners respectively, and their successors in such ownership, in such proportions as they have been so opened, deepened or widened, unless in consequence of altered circumstances the engineer hereinafter named otherwise directs which he is hereby empowered to do upon application of any party interested in the same form and manner as is hereinafter prescribed in respect of the original opening, deepening or widening; and in case the engineer finds no good reason for such application all costs caused thereby shall be borne by the applicant, and shall be collected as in this Act provided. 46 V. c. 27, s. 3.

Proper outlet must be reached.

(2) Every such ditch or drain shall be continued to a proper outlet, so that no lands, unless with the consent of

(*b*) A railway company is not subject to the provisions of this Act. *Miller* v. *Grand Trunk R. W. Co.*, 45 Q. B. 222.

the owner thereof, will be overflowed or flooded through or by the construction of any such ditch or drain, and it shall be lawful to construct such ditch or drain through one or any number of lots until the proper outlet is reached. 47 V. c. 43, s. 1.

Consent as to flooding land to be in writing.

(3) Such consent shall be in writing, and signed by the party consenting, and shall be filed with the clerk of the municipality, with the award, and may be recited or referred to therein.

Notice to owner to repair.

(4) If after a ditch or drain has been constructed under the provisions of this Act, and in case any owner whose duty it is to maintain and keep in repair any portion of such ditch or drain neglects to keep such portion in a proper state of repair, any one of the owners who is liable for maintaining and keeping in repair any portion of such ditch or drain may in writing notify the owner who neglects to keep his portion of such ditch or drain in a proper state of repair, to have the same put in such repair, and to have the same completed within thirty days from the receipt of such notice.

Application to municipality on owner's default.

(5) The owner who serves the notice may, if the work has not been performed at the expiry of the thirty days, make application to the council of the municipality to have the repairs carried out and completed.

Inspection by engineer.

(6) The council shall when such application is made, order an examination of such portion of the ditch or drain as is complained of, to be made by the engineer of the municipality or by some other person to be appointed by the council, and who may be called the "Inspector of drains and ditches." The inspection shall be made not later than twelve days from the time of the ordering the same, and the engineer or inspector as the case may be, shall within twelve days after making the inspection, file with the clerk of the municipality a certificate, stating whether the complaint is well founded or not, and wherein the ditch or drain requires repairing.

Report of inspector that complaint well founded.

(7) If the engineer or inspector (as the case may be) certifies that the complaint is well founded, then in such case the council shall order him to proceed and let the work as provided in section 15, for re-letting work, unless the owner has himself in the meantime completed such repairs in

accordance with the report or certificate of the engineer or inspector. The provisions of sections 16 and 18 shall apply as to inspection and payment of engineer's or inspector's fees and costs of work, and the council may by by-law fix the remuneration of the inspector during the time he may be engaged in the performance of any duties under this Act. A member of the council shall not be appointed inspector.

Report of inspecter that claim not well founded.

(8) If the engineer or inspector decides that the complaint is not well founded, then in such case the party making the complaint shall pay the fees of the engineer or inspector, as the case may be, and if not paid by him they shall be paid and charged as provided in section 18.

Appeal.

(9) Any owner or party interested under proceedings taken under or by virtue of the preceding six sub-sections, shall have the right of appeal as provided by this Act, where the amount involved exceeds the sum of $20. 50 V. c. 37, s. 1.

Proceedings to effect an agreement in case of dispute.

5. In case of dispute between owners respecting such proportions, any owner shall, before filing with the clerk of the municipality the requisition provided for in section 6 of this Act (Form C or to the like effect), serve upon the other owners or occupants of the lands to be effected a notice in writing signed by him (Form B or to the like effect), naming a day, hour and place convenient to the ditch or drain at which the parties are to meet, and, if possible, agree upon the respective portions of the ditch or drain to be made, deepened or widened by each of them, the notice to be served not less than twelve clear days before time of meeting; and in case at the meeting an agreement shall be come to between the parties, the agreement shall be reduced to writing (Form A or to the like effect), and shall be signed by all the parties, and shall, within four clear days from the signing thereof, be filed with the clerk of the municipality in which the land requiring the ditch or drain is situate, and the agreement may be enforced in like manner as an award of the engineer as hereinafter provided. 46 V. c. 27, s. 5; 50 V. c. 37, s. 2.

Proceedings in case no agreement is come to.

6. In case the parties at the meeting shall not agree, any owner may file with the clerk of the municipality in which the lands requiring such ditch or drain are situated a requisition (Form C or to the like effect) shortly describing the ditch or drain to be made, deepened or widened, and naming the

lands which will be affected thereby, and the owners respectively, and requesting that the engineer appointed by the municipality for the purpose be asked to appoint a day in which he will attend at the place named in the requisition, which shall not be less than ten nor more than sixteen clear days from the day on which he received a copy of said requisition, and shall also at least four clear days before the time appointed serve upon all the persons named in such requisition a notice (Form D or to the like effect) requiring their attendance at the said time and place: Provided, nevertheless, that when it shall be necessary in order to obtain an outlet, that the drain or ditch shall pass through or partly through the lands of more than five owners (the owner first mentioned in this section being one) the requisition shall not be filed, unless:

(*a*) Such owner shall first obtain the assent, in writing, thereto of (including himself) a majority of the owners affected or interested; or,

(*b*) Unless a resolution of the council of the municipality, in which the greater portion of the work is to be done, approving of the scheme or proposed work, shall be first passed after those interested have been heard or have had an opportunity to be heard by the council upon notice to that end;

(*c*) When the engineer shall under section 8 of this Act require other parties whom he deems interested to be notified, he shall not assess or bring in without his or their assent more than one additional interested person when the majority of those so notified and interested are opposed to being so brought in or assessed;

(*d*) Unless the assent (by resolution) of the said municipal council approving of the proposed extension to the lands of other interested parties shall be first passed after a hearing or notice as hereinbefore provided. 46 V. c. 27, s. 6; 50 V. c. 37, s. 3; 52 V. c. 49, s. 1.

Occupant to notify owner.

7. An occupant not the owner of land, notified in the manner provided by this Act, shall immediately notify the owner thereof, and shall, if he neglects to do so, be liable for all damages suffered by such owner by reason of such neglect. 46 V. c. 27, s. 7.

Duties of engineer.

8.—(1) The clerk shall after receiving the requisition, forthwith notify the engineer by registered letter, enclosing a copy of the requisition; and, on receipt of the same, the engineer shall notify the clerk, in writing, naming a time at which he will attend; and, on receipt of this notice, the clerk shall file the same with the requisition, and shall forthwith send a copy of the notice of the engineer by registered letter to the owner making the requisition, and the engineer shall attend at the time named in said notice, shall examine the premises and, if he deem proper, or if requested by any of the parties, shall hear evidence, and is hereby authorized to examine the parties and their witnesses on oath, and may administer an oath or affirmation as in Courts of Justice, and if he shall find the making, deepening, or widening of the ditch or drain necessary, he shall, within thirty days after the day of meeting named in the requisition, make his award in writing (Form E or to the like effect) specifying clearly the locality, description and course of the ditch or drain, point of commencement and termination of same, the portion of the ditch or drain to be done by the respective parties, and the time within which the work is to be done, the amount of his fees and other charges and by whom to be paid; and he shall have power to adjourn the examination and may require the notification and attendance of other parties whom he deems interested in the ditch or drain, such other parties to have at least four clear days notice of time and place of attendance. 46 V. c. 27, s. 8; 50 V. c. 37, s. 4; 52 V. c. 49, s. 2 (1).

(2) In no case shall the engineer include or assess the lands lying more than fifty rods above the point of commencement of the ditch or drain upon the lands mentioned in the notice (Form B) provided for by section 5 of this Act, nor the lands on either side of the ditch or drain which lie more than fifty rods from the drain, and only so much within such fifty rods as having due regard to the nature of the locality and of the soil and the lay of the land and its distance back from the ditch or drain as will be benefited by the ditch or drain, and then only according to and in proportion to the benefit which it will receive by such construction. 50 V. c. 37, s. 5.

(3) The engineer may by his award direct that any portion of such ditch or drain may be constructed as a covered drain, and shall determine the size and capacity of the proposed covered portion, and the nature and quality of the

material to be used therein, but no such direction shall be given by the engineer, if the covering of such portion of the ditch or drain would impede or delay the free flow of the water which the ditch or drain is intended to carry off. 51 V. c. 35, s. 1.

Engineer may order opening of ditch across land of a person not interested.

9—(1) If it appears to the engineer that the owner or occupier of any tract of land is not sufficiently interested in the opening up of the ditch or drain to make him liable to perform any part thereof, and at the same time that it is necessary for the other parties that the ditch or drain should be continued across the tract, he may award the same to be done at the expense of the other parties, and after the award the other parties may open the ditch or drain across the tract at their own expense without being trespassers, but causing no unnecessary damage and replacing any fences opened or removed by them. 46 V. c. 27, s. 9.

Rock cutting may be let to contractor.

(2) If it appears to the engineer that rock-cutting is required to be done, the engineer may get the rock cut or blasted by giving the contract out to public competition by tender or otherwise, instead of requiring each person benefited to do his share of the work. The engineer shall, by his award, determine the sum which shall be paid by each of the persons benefited, which sum, unless forthwith paid, shall be added to the collector's roll, together with seven per cent. added thereto, and the same shall thereupon become a charge against the land of the parties so liable, and shall be collected in the same manner as other municipal taxes. 50 V. c. 37, s. 6.

Award to be filed with clerk.

10. The engineer shall, within thirty days from the day appointed by him as named in section 8 of this Act, make and file his award, and any plan or profile of said work with the clerk of the municipality named in section 6 of this Act, and the award, plan and profile shall be official documents, and may be given in evidence in any legal proceedings by certified copies as are other official documents, and the clerk of the municipality shall forthwith, upon the filing of the award, notify each of the persons affected thereby by registered letter or personal service of the filing of the same; and the clerk shall keep a book in which he shall record the names of the parties to whom he has sent the notice, the address to which the same was sent, and the date upon which the same was deposited in the post office or personally served. 46 V. c. 27, s. 10; 48 V. c. 47, s. 1; 50 V. c. 37, s. 8.

11. Any person dissatisfied with the award and affected thereby may, within fifteen clear days from the filing thereof, appeal therefrom to the Judge of the County Court of the county in which the lands, in respect to which the proceedings are initiated, are situate, and the proceedings on the appeal shall be as follows: 46 V. c. 27, s. 11 (1); 48 V. c. 47, s. 2. Appeal

1. The appellant shall serve upon the clerk of the municipality with whom the award is filed a notice in writing of his intention to appeal therefrom, shortly setting forth the grounds of appeal. 46 V. c. 27, s. 11 (1). Notice to clerk of municipality.

2. The clerk of said municipality shall, after the expiration of the time for appeal, forward by registered letter or deliver a copy of the notice or notices of appeal, if there be more than one appeal, and a certified copy of the award, to the clerk of the Division Court of the division in which the land of the owner filing the requisition as provided in section 6 of this Act is situate and the Division Court clerk shall immediately notify the Judge of the appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he think fit, order such sum of money to be paid by the appellant or appellants to the said clerk as will be a sufficient indemnity against costs of the appeal. 46 V. c. 27, s. 11 (2); 49 V. c. 44, s. 2. Notice to clerk of Division Court and Judge.

3. The Judge shall order the time and place for hearing of appeals, and communicate the same to the clerk of the Division Court, who shall notify the engineer and all parties interested, in the manner herein provided for the service of other notices under this Act. 46 V. c. 27, s. 11 (3). Notice of hearing.

(*a*) The place for hearing such appeals shall be in the division of the Division Court in which the lands, in respect to which the original proceedings are initiated, are situated. (*b*) 51 V. c. 35, s. 2. Place for hearing appeals.

4. The Judge shall hear and determine the appeal or appeals, and set aside, alter or affirm the award, correcting any error therein, and he may examine parties and witnesses Powers of Judge.

(*b*) 51 V. c. 35, sec. 2, which repealed sub-sec. (*a*) of this sub-sec. also contains the following provision: "This provision shall apply to appeals now pending, as well as to those that may be entered hereafter, and in case of pending appeals they shall be transferred to the proper Division Court, and shall not lapse or be otherwise affected by the repeal of said sub-section (*a*)."

on oath and, if he so pleases, inspect the premises, requiring the attendance with him of the engineer, and may order payment of costs by the parties, or any of them, and fix the amount of such costs. 46 V. c. 27, s. 11 (4).

Time within which appeal to be heard.

5. It shall be the duty of the Judge to hear and determine the appeal within one month after receiving notice thereof as provided by this section, but his neglect or omission so to do shall not render invalid the hearing or determining of the appeal after the lapse of that time; provided always that the Judge may, if in his opinion it will be more convenient for the parties concerned, fix as the time and place for hearing the appeal a sitting of the Division Court of the division in which the land of the person giving the notice of appeal is situate, notwithstanding the time so fixed may be more than one month after the receiving of the notice, and the appeal may be heard either before or after the regular sitting of the Court. 48 V. c. 47, s. 3; 49 V. c. 44, s. 1.

Award as altered and confirmed to be enforced as original award.

6. The award as so altered or confirmed shall be certified by the clerk of the Division Court to the clerk of the municipality, together with the costs, if any, allowed and by whom to be paid, and the award shall be enforced as the award of the engineer, and the time for the completion of the work thereunder shall be computed from the date of such judgment in appeal. 46 V. c. 27, s. 11 (5).

Compelling attendance of witnesses.

12. The clerk of the Division Court receiving the notice of appeal may issue under the seal of the Court, subpœnas to witnesses, and the bailiff may serve the same; which subpœnas shall be in the form, as nearly as may be, of those used in Division Courts; and non-attendance or disobedience to a subpœna may be punished in the same manner as in a case in a Division Court. 49 V. c. 44, s. 3.

Payment to contractor.

13. It shall be the duty of the municipality, through the treasurer thereof, to pay the contractor for the work as soon as done to the satisfaction and upon the certificate of the engineer, pending the subsequent collection thereof as aforesaid. 50 V. c. 37, s. 7.

Payment of fees.

14. The municipality shall, at the expiration of the time for appeal or after appeal, as the case may be, pay to the engineer his fees, and also pay to the person declared to be entitled to the same, any fees or costs awarded or adjudged

to him and shall, unless the same be forthwith repaid by the person awarded or adjudged to pay the same, place the amount upon the collector's roll as a charge against the lands of the person awarded or adjudged to pay the same, and the same shall thereupon become a charge upon such lands, and shall be collected as ordinary municipal taxes. 46 V. c. 27, s. 12.

Engineer to inspect work on request at expiration of time limited, and may re-let same.

15—(1) The engineer shall, at the expiration of the time limited by the award for the completion of the work, inspect the ditch or drain, if required in writing so to do by any of the parties interested, (c) and if he finds the work or any portion thereof not completed in accordance with the award, he may let the same, in sections, as apportioned in the award, to the lowest bidder therefor, taking such security for the performance thereof within the time to be limited, as he may deem necessary, but no such letting shall take place till after four clear days' notice in writing of the intended letting has been posted in at least three conspicuous places in the neighbourhood of the work, and notice thereof is sent by registered letter to such parties interested in said award as are non-resident in said municipality ; but if the engineer is satisfied of the *bona fides* of the person doing the work, and there is good reason for the non-completion thereof, he may, in his discretion, extend such time. 46 V. c. 27, s. 13.

(2) The engineer may let the work, by the award directed to be done a second time or oftener if it becomes necessary in order to secure its performance and completion. 52 V. c. 49, s. 3.

Inspection of work by engineer on completion.

16. The engineer shall upon receipt of notice in writing of the final completion of the work mentioned in the preceding section inspect the same within one week thereafter, and, if approved of and accepted by him, certify in writing the fact to the clerk of the municipality, giving a separate certificate for each portion or section of work let and completed (Form F or to the like effect), and stating the name in each certificate of the person who did the work, as well as the amount he is entitled to receive therefor, and also such extra fees as the engineer is entitled to, by reason of such letting and subsequent inspection, and by whom the same are to be paid. 46 V. c. 27, s. 14.

(c) The provision as to inspection by the engineer is imperative, but the other provisions of this section are merely permissive. *O'Byrne* v. *Campbell*, 15 O. R. 339.

Penalty for violation of ss. 15 and 16.

17. Any engineer who wilfully neglects to make the inspection required by either of the preceeding two sections for thirty days after he has received the written notice mentioned therein, shall be liable to a fine of not less than $5 nor more than $10, to be recovered with costs on complaint made before one of Her Majesty's Justices of the Peace having jurisdiction in the matter, and in default of payment the same shall be recoverable by distress, and every such fine shall be paid over to the treasurer of the municipality in which the offence arose. 49 V. c. 44, s. 4.

Payment of amount due to engineer and other persons.

18.—(1) The council shall, at their meeting next after the filing of the certificate or certificates mentioned in section 16, pay to the engineer his additional fees therein mentioned and forthwith thereafter may pay to any person the amount which, according to such certificate, he is entitled to receive for any work mentioned in section 16, and thereafter the council shall, unless the amount or amounts named in the certificate or certificates, including such additional fees, is forthwith paid by the respective parties declared in the certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to the collector's roll, together with seven per cent. added thereto, and the same shall thereupon become a charge against the lands of the party or parties so liable, and shall be collected in the same manner as other municipal taxes, and when collected shall be paid over to any person entitled thereto. 47 V. c. 43, s. 2; 50 V. c. 37, s. 9.

(2) To remove doubts and to prevent delays and avoid expense it is declared that no action, suit or proceeding shall lie or be had for a mandamus or other order of the High Court to enforce or compel the performance or completion of the work by the award or certificate of the engineer apportioned or directed to be done against the person by the award or certificate directed to do the work, but the performance of the work shall be secured and the payment therefor enforced and collected in the manner provided for by this Act. This section shall not apply to or affect pending suits, actions or proceedings. 52 V. c. 49, s. 4.

Service of notices.

19.—(1) Notices under the provisions of this Act shall be served personally, or by leaving the same at the place of abode of the owner or occupant, with a grown-up person residing thereat, and in case of non-residents, then upon the agent of the owner, or by registered letter addressed to the

owner at the post office nearest to his last known place of abode. 46 V. c. 27, s. 16.

Interpretation "non-resident."

(2) A "non-resident" within the meaning of this section shall include a person who does not reside within the municipality in which the lands which he owns are situate and in respect of which proceedings are taken or to be taken under the provisions of this Act; and where the place of abode of a non-resident is not known notices under the provisions of this Act requiring to be served on such non-resident may be served in such manner as the Judge of the County Court may direct. 48 V. c. 47, s. 4.

Service of notice.

Municipal corporations to have same rights as persons.

20. Every municipal corporation shall have and exercise all the rights and privileges of this Act, and may be made parties to the agreement or award, and shall be considered as owner of the highway for the purposes of this Act, and shall in all respects be in the same position as an individual owner. 46 V. c. 27, s. 17.

Power as to covering drains.

21.—(1) In any case where an open ditch or drain has been or may be constructed under the provisions of this Act, any person through whose lands such ditch or drain has been opened, may, with the consent of the engineer of the municipality, convert so much of such ditch or drain as runs through the lands of such person into a covered drain.

(2) The engineer, before giving his consent, shall examine the portion of the ditch or drain which is proposed to be covered, and shall determine the size and capacity of the proposed covered portion of the drain or ditch, and the nature and quality of material to be used therein, but no such consent shall be given by the engineer if the covering of such portion of the ditch or drain would impede or delay the free flow of the water which the ditch or drain is intended to carry off. 50 V. c. 37, s. 10.

If consent given award to be filed.

22. The engineer shall file with the clerk of the municipality (if such consent be given) an award setting forth the particulars in accordance with the provisions of this Act, and the award shall be subject to appeal. 50 V. c. 37, s. 11.

Notice to engineer.

23. The person making the application for the covering of the ditch or drain, may notify the engineer to inspect the ditch or drain in the first place, and shall also notify the

owners interested whose lands are situate above his own of the time when the engineer will examine the drain, and shall also notify the engineer when the work is completed, and it shall not be necessary for such person to take the proceedings provided in sections 5 and 6 of this Act, and such person shall be liable for the fees and expenses of the engineer, and if not paid by such person to the engineer, the fees and expenses shall be collected, as provided for in this Act. 50 V. c. 37, s. 12.

Payment of fees and expenses.

Flow of water not to be impeded.

24. Such person (and the subsequent owners) shall maintain and keep the covered portion of the drain of such sufficient size and capacity as not to impede or delay the free flow of the water above the covered portion or brought thereto by said drain; and any damages occasioned by the neglect or failure to so maintain and keep such portion of the size and capacity aforesaid shall be payable by the owner of the land upon which the insufficient or imperfect portion of the drain is situate. 50 V. c. 37, s. 13.

Persons desiring to use ditch or drain after construction.

25. In case any person during or after the construction of the ditch or drain herein provided for, desires to avail himself of such ditch or drain for the purpose of draining other lands than those contemplated by the original proceedings, he may avail himself of the provisions of this Act, as if he were or had been a party to such original proceedings; but no person shall make use of the ditch or drain constructed under the provisions of this Act, unless under agreement or award pursuant to its provisions as to the use of lands of others, as to the enlargement, if such be necessary, of the original ditch or drain so as to contain additional water therein, and as to the time for the completion of such enlargement. 46 V. c. 27, s. 18; 48 V. c. 47, s. 5.

Drain may be continued into adjoining municipalities.

26. Notwithstanding any of the lands through which the drain is required, are situate in a municipality adjoining the one in which the original proceedings were commenced, the engineer shall have full power and authority to continue the ditch or drain in and through so much of the lands in the adjoining municipality as may be found necessary; and all proceedings authorized under the provisions of this Act are to be had, taken, and carried on in the municipality, where commenced; but in such case the clerk of the municipality shall forward to the clerk of the adjoining municipality a certified copy of the award, as made, confirmed, or altered, and

shall also forward to him a certified copy of every certificate of the engineer which affects or relates to the lands in the adjoining municipality, and to the owners thereof; and the municipal council shall, unless the amounts are forthwith paid by the parties declared by the certificate liable to pay the same, have and take all proceedings for the collection of the sums so certified to be paid, as though all the proceedings had been taken and carried on in the adjoining municipality. 46 V. c. 27, s. 19.

When drains or ditches do not carry off originally intended, award may be reconsidered.

[**26** *a*.]—(1) In any case where a drain or ditch has been made and constructed, or where a creek or watercourse has been deepened, widened or extended, or where an under-drain has been made under the provisions of [this Act] or any previous Act respecting ditches and watercourses, or may hereafter be so made and constructed, and when any such drain, ditch or under-drain, creek or water-course does not carry off the water it was originally designed to carry off, any one of the owners interested in the original construction of such ditch, drain or under-drain, or in the deepening, widening or extending of any such creek or watercourse, or who may have acquired the ownership of the lands, the owner of which at the time of the making and construction of such works was liable for the cost of the same, may take proceedings for the reconsideration of the award or agreement as the case may be, and in order to do so, such owner shall take the same proceedings and in the same form and manner as is done in respect to the original opening and making of such aforementioned work, except as hereinafter provided.

Council may obtain report from engineer.

(2) Before any of the aforesaid proceedings are taken, such owner shall upon notice in writing to all parties interested make an application to the council of the municipality in which the lands are situate; upon hearing the complaint of said owner, the council, if satisfied that such owner has reasonable grounds for complaint, may order the engineer to make an examination of such ditch, drain, under-drain, creek or water-course, and to make a report to the head of the council, not later than thirty days from such meeting of council.

If report is favourable, applicant may proceed.

(3) If the report of the engineer certifies that the complaint is well founded the applicant may go on and take proceedings, as provided in sub-section 1 of this section, and the costs incurred shall be apportioned under the award; if the engineer reports that there is no cause of complaint, then the applicant

Costs.

shall pay the whole cost incurred, and if not forthwith paid by him, it shall be entered in the collector's roll in accordance with sections 14 and 18 of [this Act.]

When proceedings may be taken.

(4) No proceedings shall be taken under the provisions of this section before the expiration of three years after the completion of such work in the first instance. 52 V. c. 49. s. 5.

Costs of maintenance and repairs.

[26 *b*.] In order to remove all doubts as to the maintaining and keeping in repair of any ditch or drain, whether covered or open, or of any creek or watercourse that has been deepened or widened, under the provisions of *The Ditches and Watercourses Act*, before the year 1883, it is hereby declared that the cost of maintaining and keeping in repair any such ditch or drain, whether covered or open, or of any such creek or watercourse shall be borne by the respective owners, in such proportion as is provided in the original or any amending award; and the manner of enforcing such repairing and maintaining shall be as set forth in sub-sections 4, 5, 6, 7, 8 and 9, of section 4 of [this Act.] 52 V. c. 49, s. 6.

Scale o fees.

27. The fees to which the engineer shall been titled under this Act shall be such as shall be fixed by by-law or resolution of the council, and in case no such fees are fixed by the council the same shall be his legally authorized fees for similar work, or such less amount as may be agreed upon, and the fees to witnesses and for the service of papers authorized by the Division Court clerk shall be the same as those allowed to witnesses, and for similar services in the Division Court. 46 V. c. 27, s. 20.

Clear days, meaning of.

[27 (*a*)] In all cases when in this Act any particular number of days expressed to be "clear days" is prescribed the same shall be exclusive of both the first and last day. 52 V. c. 49, s. 7.

Application of Act.

28. This Act shall apply to deepening or widening a ditch or drain. 50 V. c. 37, s. 15.

FORM A.

(*Section 5.*)

Township of

Whereas it is found necessary that a ditch or drain should be made (deepened, *or* widened) on lot No. in the concession of the township of and it is necessary to continue the same

through lot number in the concession of the township of (*if more than one lot describe them*).

Therefore we owners of the land hereinafter described, do agree each with the other as follows:

That I, owner of (*describe lot*) agree that I will make (deepen *or* widen) and maintain that part of such ditch or drain commencing at stake number one planted (*describing the locality of said stake*) and thence to stake number two, and that said portion of said ditch or drain shall be (*describing the depth and width*) and I owner of (*giving the name of each person, the land owned by him, the portion of work assigned, its depth, width, etc.*), and each of us agrees to have our said respective portions completed on or before the day of A.D. 18 .

Dated, } (Signed by the parties.)
Witness. }

46 V. c. 27, *Form* A.

FORM B.

(*Sections 5, 8.*)

Township of

To

Sir,—As the owner of lot number in the concession of the township of I require to construct a ditch or drain through said lot, and find it necessary to continue the same through your land, being lot number in the concession of the township of under *The Ditches and Watercourses Act* and request that you will attend at on the day of 18 at the hour of o'clock, in the noon, with the object of agreeing, if possible, upon the respective portion of such ditch or drain to be made, deepened or widened by the several parties interested.

Dated this day of 18

Yours, etc.

46 V. c. 27, *Form* B.

FORM C.

(*Sections 5, 6.*)

To

Clerk of the Municipality of the of

Sir,—As the owner of lot number in the concession of the township of I require to construct a ditch or drain through the said lot and it will be necessary to continue the ditch or drain through the following lands on lot number in the concession of the township of owned by lot number in the concession of the township of owned by (*describe each lot through which the ditch or drain must be continued, and the*

name of the owner of each parcel), and having failed to agree upon the respective portions to be made by each, "I request that the engineer appointed by the municipality be asked to appoint a day on which he will attend at the locality of the said proposed ditch or drain, and examine the premises, hear the parties and their witnesses and make his award under the provisions of *The Ditches and Watercourses Act.*

Dated

(Signed by Party or Parties.)

46 V. c. 27, *Form* C.; 52 V. c. 49, s. 2 (2).

FORM D.

(*Section 6.*)

To

Take notice that the engineer appointed by the municipality for the purpose will attend at lot number in the concession of on the day of A.D. 18 at the hour of o'clock in the noon, to examine the site of the proposed ditch or drain and make his award therein; and you as the owner of (*describe the lot*) which may be affected thereby, are requested to attend (with any witnesses you may desire to have heard) at said time and place.

Dated

Yours, &c.,

46 V. c. 27, *Form* D.

FORM E.

(*Section 8.*)

I the engineer appointed by the municipality of the township of in the county of under the provisions of *The Ditches and Watercourses Act*, having by the requisition of owner (*or* owners) of lot number in the concession of the township of filed with the clerk of the said municipality, representing that he (*or* they) required a ditch or drain on said lot, and that it would be necessary to continue the ditch or drain through the following lands on lot number in the concession of the township of owned by etc., did attend at the time and place named in said notice, and having examined the locality of said ditch or drain, and heard the parties and their witnesses (*if any*), find and award as follows:

That lot number in the concession of the township of would be benefited by, and requires a ditch or drain (*or* the deepening *or* widening of a ditch or drain, if already made), to enable the proper cultivation or use of the said land, and I find that said ditch or drain will require to be extended across the land of being lot number in the concession of and

across the land of being lot number in the concession of the township of (*and so on, giving the name of each owner and lot to termination of said ditch or drain*), and I award the making of said ditch or drain (*or* the deepening *or* widening as the case may be), as follows:—.....shall commence at stake number one planted (*describe with reasonable certainty where planted*), and shall open up and maintain a ditch or drain (*describe width and depth*), to stake number two planted (*describe where planted, distance and direction from first stake*), and said portion shall be made and completed within (*name time within which to be completed*). That shall commence at stake number two, above described, and shall open up and maintain a ditch or drain (*describe width and depth*) to stake number three planted (*describe where planted, distance and direction from stake number two*) and said portion shall be made and completed within (*name time, etc.*) That shall, etc., (*and so on to the termination of said ditch or drain*).

That my costs attendant upon the examination, and making of this award are and shall be borne and paid as follows, (*give the name of the persons to be charged therewith, and the portion to be borne by each*).

Dated this day of A.D. 18

Witness } (Signature of Engineer.)

46 V. c. 27, *Form* E.

FORM F.

(*Section 16.*)

To

Clerk of the township of

I hereby certify that has completed certain work which under my award dated the day of A. D. 18 , one was ordered and adjudged to perform, and which the said having failed to do was by me subsequently let to the said for the sum of and the said is entitled to be paid the said amount.

I further certify that my additional fees are and that said amount and said fees are and that said amount and said fees are chargeable on (*describe property to be charged therewith*) and shall unless forthwith paid be added to the Collectors' Roll (*with interest*) as provided in section 18 of *The Ditches and Watercourses Act.*

Dated this day of A.D. 18

Engineer for

46 V. c. 27, *Form* F.

R. S. O. cap. 221.

An Act for the Protection of Game and Fur-bearing Animals.

GAME PROTECTED :
Close period, s. 1.
Possession during close period, s. 2.
Protection of eggs, s. 3.
PROHIBITIONS :
Trapping, s. 4,
Batteries, swivel guns or sunken punts, s. 5.
Night hunting, s. 5.
Use of poison, s. 11.
FUR-BEARING ANIMALS PROTECTED, s. 6.
PROSECUTIONS :
Before whom to be brought, s. 21.
Evidence, s. 19.
Convictions not to be quashed for want of form, s. 20.
PENALTIES :
How recoverable, s. 7.
Application of, s. 8.
Confiscation of Game, s. 9.
Imprisonment, s. 18.
GAME PRESERVES PROTECTED, s. 10.
DEER NOT TO BE KILLED FOR EXPORT, s. 12.
Restrictions as to hunting deer, ss. 16, 17.
HOUNDS NOT TO RUN AT LARGE, s. 13.
INSPECTORS, APPOINTMENT AND DUTIES, ss. 14-15.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Close period.

1. None of the animals or birds hereinafter mentioned, shall be hunted, taken or killed, within the periods hereinafter limited. 49 V. c. 45 s. 2, *part.*

Deer, etc.

1. Deer, elk, moose, reindeer, or caribou, between the twentieth day of November and the fifteenth day of October; but the period hereinbefore limited shall not, as to moose, elk, reindeer, or caribou, apply before or until the fifteenth day of October, 1895, and no moose, elk, reindeer or caribou, shall be hunted, taken, or killed between the first day of April, 1888, and the fifteenth day of October, 1895. 51 V. c. 36 s. 1.

Grouse, etc.

2. Grouse, pheasants, prairie fowl, or partridge, between the first day of January and the first day of September;

Quail and wild turkeys.

3. Quail or wild turkeys, between the fifteenth day of December and the fifteenth day of October; but no wild turkey shall be hunted, taken or killed before the fifteenth day of October, 1889.

Woodcock.

4. Woodcock, between the first day of January and the fifteenth day of August.

5. Snipe, rail, and golden plover, between the first day of January and the first day of September; Snipe, rail and plover.

6. Swans or geese, between the first day of May and the first day of September; Swans and geese.

7. Ducks of all kinds, and all other water fowl, between the first day of January and the first day of September; Ducks and other water fowl.

8. Hares, between the fifteenth day of March and the first day of September. 49 V. c. 45, s. 2, *part.* Hares.

2. No person shall have in his possession, any of the said animals or birds, no matter where procured, or any part or portion of any such animals or birds, during the periods in which they are so protected; provided that they may be exposed for sale for fifteen days, and no longer, after such periods, and may be had in possession for the private use of the owner and his family at any time, but in all cases the proof of the time of killing, taking, or purchasing, shall be on the person so in possession. 49 V. c. 45, s. 3. Possession, how far lawful. Exposure for sale.

3. No eggs of any of the birds above mentioned shall be taken, destroyed, or had in possession by any person at any time. 49 V. c. 45, s. 4. Protection of eggs.

4. None of the said animals or birds, except the animals mentioned in section 6 of this Act, shall be trapped, or taken by means of traps, nets, snares, gins, baited lines, or other similar contrivances; nor shall such traps, nets, snares, gins, baited lines, or contrivances, be set for them, or any of them, at any time; and such traps, nets, snares, gins, baited lines, or contrivances, may be destroyed by any person without such person thereby incurring any liability therefor. 49 V. c. 45, s. 5. Trapping forbidden.

5. None of the contrivances for taking or killing the wild fowl, known as swans, geese, or ducks, which are described or known as batteries, swivel guns or sunken punts, shall be used at any time, and no wild fowl, known as ducks, or other water fowl, except geese or swans, shall be hunted, taken or killed, between the expiration of the hour next after sunset and the commencement of the hour next before sunrise. 49 V. c. 45, s. 6. Batteries, etc., for taking wild fowl, forbidden, and night hunting forbidden.

6. No beaver, mink, muskrat, sable, martin, otter, or fisher shall be hunted, taken or killed, or had in possession of any person between the 1st day of May, and the first day of Fur-bearing animals protected.

November; nor shall any traps, snares, gins, or other contrivances, be set for them during such period; nor shall any muskrat house be cut, speared, broken, or destroyed, at any time; and any such traps, snares, gins, or other contrivances so set, may be destroyed by any person without such person thereby incurring any liability therefor; provided that this section shall not apply to any person destroying any of the said animals in defence or preservation of his property. 49 V. c. 45, s. 7.

Proviso.

Penalties.

7. Offences against this Act shall be punished upon summary conviction on information or complaint before a Justice of the Peace, as follows:

(*a*) In case of deer, elk, moose, reindeer, or caribou, by a fine not exceeding $50, nor less than $10, with costs, for each offence;

(*b*) In case of birds or eggs, by a fine not exceeding $25, nor less than $5, with costs, for each bird or egg;

(*c*) In case of fur-bearing animals, mentioned in section 6 of this Act, by a fine not exceeding $25, nor less than $5, with costs, for each offence;

(*d*) In the case of other breaches of this Act, and where no other penalty therefor is by this Act provided, by a fine not exceeding $25, nor less than $5, with costs. 49 V. c. 45, s. 8; 51 V. c. 36, s. 2.

Disposition of penalties

8. The whole of such fine shall be paid to the prosecutor unless the convicting Justice has reason to believe that the prosecution is in collusion with, and for the purpose of benefiting the accused, in which case the said Justice may order the disposal of the fine as in ordinary cases. 49 V. c. 45, s. 9.

Confiscation of game.

9. In all cases confiscation of game shall follow conviction, and the game so confiscated shall be given to some charitable institution or purpose, at the discretion of the convicting Justice. 49 V. c. 45, s. 10.

Protection of game preserves.

10. In order to encourage persons who have heretofore imported or hereafter import different kinds of game, with the desire to breed and preserve the same on their own lands, it is enacted that it shall not be lawful to hunt, shoot, kill, or destroy any such game without the consent of the

owner of the property wherever the same may be bred. 49 V. c. 45, s. 11.

Use of poison prohibited.

11. It shall not be lawful for any person to kill or take, any animal protected by this Act, by the use of poison or poisoned substances, nor to expose poison, poisoned bait, or other poisoned substances, in any place or locality where dogs or cattle may have access to the same. 49 V. c. 45, s. 12.

Deer, moose etc., not to be killed for export.

12.—(1) No person shall at any time hunt, take, or kill any deer, elk, moose, reindeer, or caribou, for the purpose of exporting the same out of Ontario, and in all cases the onus of proving that any such deer, elk, moose, reindeer, or caribou, as aforesaid, so hunted, taken, or killed, is not intended to be exported as aforesaid, shall be upon the person hunting, killing, or taking the same, or in whose possession or custody the same may be found.

(2) Offences against this section shall be punished by a fine not exceeding $25, nor less than $5, for each animal. 49 V. c. 45, s. 13.

Hounds not to run at large.

13. No owner of any hound, or other dog known by the owner to be accustomed to pursue deer, shall permit any such hound, or other dog, to run at large in any locality where deer are usually found, during the period from the fifteenth day of November to the fifteenth day of October, under a penalty on conviction of not more than $25, nor less than $5, for each offence; any person harbouring or claiming to be the owner of any such hound or dog shall be deemed the owner thereof. 49 V. c. 45, s. 14.

Appointment of game inspectors.

14. It shall be lawful for the council of any county, city, town, township, or incorporated village, to appoint an officer who shall be known as the game inspector for such county, city, town, township, or incorporated village, and who shall perform such duties in enforcing the provisions of this Act, and be paid such salary as may be mutually agreed upon. 49 V. c. 45, s. 15.

Duties of inspector. Seizure of game.

15.—(1) It shall be the duty of every game inspector appointed as aforesaid forthwith to seize all animals or portions of animals in the possession of any person contrary to the provisions of this Act, and to bring the person in possession of the same before a Justice of the Peace to answer for such illegal possession.

(2) It shall also be the duty of every game inspector to institute prosecutions against all persons found infringing

Prosecutions.

the provisions of this Act, or any of them, and every inspector may cause to be opened, or may himself open in case of refusal, any bag, parcel, chest, box, trunk, or receptacle in which he has reason to believe that game killed or taken during the close season, or peltries out of season, are hidden.

Search for game.

(3) Every inspector, if he has reason to suspect, and does suspect that game killed or taken during the close season, or peltries out of season, are contained or kept in any private house, shed, or other building, shall make a deposition in the Form A annexed to this Act, and demand a search warrant to search such store, private house, shed, or other building, and thereupon such Justice of the Peace may issue a search warrant according to Form B. 49 V. c. 45, s. 16.

Deer not to be hunted except by persons resident in Ontario or Quebec.

16. No person shall at any time prior to the year 1895 hunt, take or kill, any deer unless such person has been actually resident and domiciled within the Province of Ontario, or within the Province of Quebec, for a period of at least three months next before the said time, and any person offending against this section shall be liable to a fine not exceeding $20, nor less than $10, with costs of the prosecution, for each animal so hunted, taken or killed, and in default of immediate payment of said fine and costs shall be liable to be imprisoned in the common gaol of the county or district wherein the offence was committed for a period not exceeding three months: Provided always that this section shall not apply to any person who, being a shareholder of or in an incorporated company, hunts, kills, or takes on the lands of such company, any of the animals mentioned in this section: Provided, moreover, that this section shall not apply to any person in any year for which he has obtained from the Commissioner of Crown Lands a permit to hunt, kill, or take any of the animals in this section mentioned, and the Commissioner of Crown Lands is hereby authorized to grant and issue such a permit upon payment therefor of a fee of $10 for each year during whichthe same is to be in force, and upon being satisfied that the person applying for the permit may be relied upon to observe and comply with the other provisions of this Act. 51V. c. 36, s. 3, *part.*

Limit as to number of deer which any one person or several persons hunting together may kill.

17. No one person shall, during any one year prior to the year 1895 kill or take alive more than five deer; and no two persons hunting together or from one camp or place of rendezvous, or forming or being what is commonly known

as a hunting party shall, in any one year prior to the year 1895, kill or take alive more than eight deer; and no three or more persons hunting together or from one camp or place of rendezvous, or forming or being what is commonly known as a hunting party shall, in any one year prior to the year 1895, kill or take alive more than twelve deer, and any person offending against this section shall be liable to a fine not exceeding $20, nor less than $5, with costs of the prosecution, for each deer beyond or exceeding the number so permitted to be killed or taken as aforesaid, and in default of immediate payment of such fine and costs shall be liable to be imprisoned in the common gaol of the county or district within which the offence was committed for a period not exceeding three months. 51 V. c. 36, s. 3 *part.*

Imprisonment in default of payment of fine.

18. Where, under this Act, any person has been convicted of an offence against any of the provisions of this Act, such person, in default of the immediate payment of any fine or costs imposed upon him or for which he has been adjudged to be liable in respect or because of such offence, shall be liable and may be adjudged to be imprisoned in the common gaol of the county or district in which the offence was committed for a period not exceeding three months. 51 V. c. 36, s. 3 *part.*

Evidence of accused.

19. On the trial of any complaint, proceeding, matter or question under this Act, the person opposing or defending, or who is charged with any offence against or under any of the provisions of this Act, shall be competent and compellable to give evidence in or with respect to such complaint, proceeding, matter or question. 51 V. c. 36, s. 3 *part.*

Conviction not to be quashed for want of form.

20. A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form. 51 V. c. 36, s. 3 *part.*

Before whom prosecutions to be brought.

21. All prosecutions under this Act may be brought and heard before any of Her Majesty's justices of the peace in and for the county and district where the penalty was incurred, or the offence was committed, or wrong done, and in cities, towns, and incorporated villages in which there is a police magistrate, before such police magistrate; and save where otherwise provided by this section the procedure shall be governed by *The Act respecting Summary Convictions before Justices of the Peace and Appeals to General Sessions.* 51 V. c. 36, s. 3 *part.*

Rev. Stat. c. 74.

FORM A.

(Section 15.)

I, undersigned Game Inspector for do hereby declare that I have reason to suspect, and do suspect, that game killed or taken during the close season, *or* furs out of season, etc., etc. (*as the case may be*) are at present held and concealed (*describe the property, occupant, etc., and the place*).

Wherefore I pray that a warrant may be granted and given to me to make the necessary searches (*describe here the property, etc., as above.*.

Sworn before me at
this day of
A. D. 18
L. B.
J. P.

X. Y.
Game Inspector.

49 V. c. 45, Form A.

FORM B.

(Section 15)

Province of Ontario,
County of

To each and every the constables of
County of

Whereas, Game Inspector for has this day declared before me, the undersigned, that he has reason to suspect that game, *or* birds killed or taken during the close season, *or* furs out of season, etc. *as the case may be*) are at present held and concealed, (*describe property, occupant, place, etc*).

Therefore, you are commanded by these presents in the name of Her Majesty, to assist the said Game Inspector, and to diligently help him to make the necessary searches to find the (*state the birds or game killed or taken during the close season, or furs out of season, etc.,*) which he has reason to suspect and does suspect to be held and concealed in (*describe the property, etc., as above*) and to deliver, if need there be, the said birds, etc. (*as the case may be*) to the said Game Inspector, to be by him brought before me or before any other magistrate to be dealt with according to law.

Given under my hand and seal
at County of
this day of
A. D. 18
L. S.

L. B.
J. P.

49 V. c. 45, Form B.

R. S. O. cap. 223. (a)

An Act to encourage the Destroying of Wolves.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

When any person producing to a J. P. the head of a wolf with the ears on, entitled to a reward.

1. If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any county in Ontario, and makes oath or affirmation (as the case may be), or otherwise proves to the satisfaction of such Justice, that the wolf was killed within that county, or within one mile of an actual settlement in the county, he shall be entitled to receive from the treasurer of the county the sum of $6 as a bounty for the same. R. S. O. 1877, c. 202, s. 1.

Justice of Peace to give his certificate.

2. In case the Justice of the Peace before whom the head of the wolf is produced, is satisfied of the fact that the wolf was killed as in the preceeding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed as in the last section mentioned has been proved to his satisfaction and such certificate shall authorize the person holding the same to demand and receive from the treasurer of the county the said bounty of $6. R. S. O. 1877, c. 202, s. 2.

Treasurer to pay the reward if in funds.

3. The treasurer of the county shall forthwith pay such bounty to the person presenting the certificate, provided the county funds in his hands enable him so to do; and if the said funds do not so enable him, then the said treasurer shall pay the same out of the moneys of the county which next thereafter come into his hands. R. S. O. 1877, c. 202, s. 3.

Other county expenses to be first paid.

4. The treasurer of a county shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the county, arising from the building of a court house and gaol, and keeping the same in repair, the fees of the clerk of the peace, the salary of the gaoler, and the maintenance of the prisoners. R. S. O. 1877, c. 202, s. 4.

(a) Rev. Stat. c. 222 is repealed by 52 V. c. 50. The latter Act is omitted as it does not confer powers or impose duties on municipal councils.

If not paid certificate may be tendered in discharge of rates.

5. When the funds of any county do not enable the treasurer thereof to pay the bounty, the certificate thereof shall be a lawful tender to the full value and amount therein specified, for and towards the discharge of any county rate or assessment to be collected from any person within the county in which the wolf was destroyed, and shall be accepted and taken by the collector of any township within the county as equivalent to so much of the current money of Canada, and may be by him paid and delivered over to the county treasurer, by whom the same shall in like manner be taken and accepted as equivalent to so much of the current money aforesaid. R. S. O. 1877, c. 202, s. 5.

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51 Vict. cap. 4. (a)

An Act to establish Manhood Suffrage for the Legislative Assembly.

Assented to 23rd March, 1888.

HER MAJESTY, by and with the advice and consent of the Legislative Assemblyof the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Manhood Suffrage Act*," and shall go into force on the 1st of January, 1889. 51 V. c. 4, s. 1.

Property qualification abolished.

2. Property or income qualification for voters as respects the Legislative Assembly is abolished, except as hereinafter provided. 51 V. c. 4, s. 2.

Who may vote at elections.

Rev. Stat. c. 9.

3. Every male person of the full age of twenty-one years, a subject of Her Majesty by birth or naturalization, and not disqualified under sections 4 and 5 of *The Ontario Election Act*, or under this Act, and not otherwise by law prohibited from voting, shall, if duly entered on the list of voters proper to be used, be entitled to vote at elections to serve in the Legislative Assembly of this Province:

(a) The amendments made by 52 V. c. 5, are introduced into this Act.

Provided that such person had resided within the Province for the nine months next preceding the time fixed by statute (or by a by-law authorized by statute) for beginning to make the assessment roll in which he is entitled to be entered as a person qualified to vote, or had so resided within the Province for the twelve months next preceding the time up to which a complaint may be made to the County Judge, under *The Voters' Lists Act*, or this Act, to insert the name of such person in the list: Proviso. 52 V. c. 3.

And provided that such person was in good faith at the time fixed as aforesaid, a resident of, and domiciled in, the municipality in the list of which he is entered, and is, at the time of tendering his vote, a resident of and domiciled within the electoral district, and had resided in the said electoral district continuously from the time fixed as aforesaid for beginning to make said roll or for making such complaint, as the case may be. 51 V. c. 4, s. 3. Proviso.

4. A person may be resident in the municipality within the meaning of this Act, notwithstanding occasional or temporary absence in the prosecution of his occupation as a lumberman, mariner, or fisherman, or attendance as a student in an institution of learning in the Dominion of Canada; and such occasional or temporary absence shall not disentitle such person to be entered on the assessment roll or voter's list as a qualified voter, or to vote. 51 V. c. 4, s. 4. Temporary absence not to disqualify.

5. No person shall be entitled to be marked or entered by the assessor as a qualified voter as hereinafter mentioned, or shall be entered on a list of voters, in respect of residence in a municipality where he is in attendance as a scholar or student at any school, university or other institution of learning, unless he has no other place of residence entitling him to vote. 51 V. c. 4, s. 5. Students at college, etc.

6. No person shall be entitled to be marked by the assessor as qualified, or shall be entered on a list of voters, or shall vote, who at the time of marking or entering or voting (as the case may be) is a prisoner in a gaol or prison undergoing punishment for a criminal offence; or is a patient in a lunatic asylum; or is maintained, in whole or in part, as an inmate receiving charitable support or care in a municipal poor house or house of industry, or as an Disqualifications.

inmate receiving charitable support or care in a charitable institution receiving aid from the Province under any statute in that behalf. 51 V. c. 4, s. 6.

Indians.

7—(1) Enfranchised Indians, whether of whole or part Indian blood, shall, like other persons, be entitled to vote without having a property qualification.

(2) Unenfranchised Indians, of whole or part Indian blood, not residing among Indians or on an Indian reserve, shall, in lieu of legal enfranchisement, have the same property qualification as heretofore in order to entitle them to vote.

(3) Unenfranchised Indians, of whole or part Indian blood, residing among Indians, or on an Indian reserve, shall not be entitled to vote. 51 V. c. 4, s. 7.

Qualification where there is no assessment roll or voters' list.

8. The same property and other qualifications as heretofore are continued with respect to voters in such of the municipalities, townships, and places in the Electoral Districts of Algoma East, Algoma West, East Victoria, North Hastings, North Renfrew, South Renfrew, Muskoka and Parry Sound as shall from time to time have no assessment roll or voters list. (*a*) 51 V. c. 4, s. 8.

Who may be placed on assessment roll as voters.

9—(1) The assessor shall place on the assessment roll, as qualified to be a voter, the name of every male person who delivers or causes to be delivered to the assessor, an affidavit signed by such person in the form or to the effect set forth in "Form A" appended hereto, if the facts stated are such as entitle such person to be placed thereon.

(2) The affidavit may be made before any assessor or justice of the peace, commissioner for taking affidavits, or notary public; and every such officer shall, upon request, administer an oath to any person wishing to make the affidavit. 51 V. c. 4, s. 9.

Enquiries to be made by assessor.

10. The assessor shall also make reasonable enquiries in order to ascertain what persons resident in his municipality, or in the section of the municipality in respect of which the assessor is acting, are entitled to be placed on the roll as qualified to be voters under this Act, and shall place such per-

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(*a*) See 52 V. c. 5, s. 2, printed as section 15 (*b*) of this Act on page 1137, as to oaths to be taken in electoral districts or parts of electoral districts where this Act is not in force.

sons on the roll as qualified to be voters without the affidavit. 51 V. c. 4, s. 10.

Entry by assessor under Rev. Stat. c. 193, s. 14.

11.—(1) Opposite the name of every person qualified to be a voter the assessor shall in column 4 (mentioned in section 14 of *The Assessment Act*) and (in addition to the letters, if any, required to show the qualification of such person in respect of municipal elections) write in capitals the letters M. F., meaning thereby "Manhood Franchise," and shall number all such names.

(2) Opposite every such name the assessor shall also in column 8, mentioned in section 14 of *The Assessment Act*, enter:

(*a*) In the assessment roll of a city, town, or village, the residence of such person by the number thereof (if any), and the street or locality whereon or wherein the same is situate;

(*b*) In the assessment roll of a township the concession wherein, and the lot or part of a lot whereon, such person resides;

and in all cases, any additional description, as to locality or otherwise, which may be reasonably necessary to enable the residence to be ascertained and verified. 51 V. c. 4, s. 11.

Affidavit by assessor.

12. The assessor shall, at the foot of his assessment roll, after he has completed the same, make affidavit before a Justice of the Peace in the words, or to the effect following:—

"I have not entered any name in the above roll, or improperly placed any letter or letters in column 4 opposite any name, with intent to give to any person not entitled to vote, a right of voting.

"I have not intentionally omitted from the said roll the name of any person whom I believe entitled to be placed thereon, nor have I, in order to deprive any person of a right of voting, omitted from column 4 opposite the name of such person any letter or letters which I ought to have placed there."

51 V. c. 4, s. 12.

Complaints respecting list.

13.—(1) Complaints of persons having been wrongfully entered on the roll as qualified to be voters or of persons not having been entered thereon as qualified to be voters, who should have been so entered, may by any person entitled to be a voter or to be entered on the voters' list in the municipality or in the electoral district in which the municipality is situate, be made to the Court of Revision as in the case of

assessments, or the complaints may be made to the County
52 V. c. 3. Judge under *The Voters' Lists Act.*

(2) Any person who since the day upon which by statute or by by-law the assessment roll is returnable to the clerk and before the time for appealing against the voters' list or of giving notice of application to the Judge to have the
52 V. c. 3. names of persons entered upon the voters' list under *The Voters' Lists Act* shall have expired, has become possessed of the qualifications entitling him to vote, shall be entitled to give, or any person whose name is on the list or who has the qualification entitling him to have his name entered thereupon, may give the requisite notice or make application to the Judge to have the name of such first-mentioned person entered upon the voters' list. 51 V. c. 4, s. 13.

List when certified to be used at elections thereafter.

14. The voters' list prepared under this Act for any municipality, after being certified by the Judge, shall be used at any election thereafter in such municipality for a member of the Legislative Assembly; and in case of a municipality for which there is no such voters' list under this Act capable of being used at such election, the voters' list heretofore provided for shall be used. 51 V. c. 4, s. 14.

Penalty for personation.

15.—(1) Every person who, at an election, applies for a ballot-paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at an election, applies at the same election for a ballot-paper in his own name shall, on conviction thereof, be liable to imprisonment for a term not exceeding two years with hard labour in addition to any other punishment to which he is liable for the offence.

This section is not to apply to a person who applies for a ballot paper, believing that he is the person intended by the name entered in the voters' list in respect of which he so applies.

(2) Every person who aids, abets, counsels, or procures the commission of any such offence, shall be liable to be indicted and punished as a principal offender. 51 V. c. 4, s. 15.

Oaths.

[15 (*a*)]—(1) The oaths to be taken by voters, or persons claiming to be voters, under [this Act] shall be those set forth in the schedule hereto in Forms C, D, E, F, G, H, I and K instead of those mentioned in section 91 of *The Ontario Election Act.*

(2) Every person entered on a voters' list as being a voter under [this Act,] shall when voting at any election under *The Ontario Election Act*, and if required to take any oath or affirmation under the provisions of said section 91 of said last mentioned Act, be at liberty to select for himself for that purpose either of the said forms C, D, E, F, G, H, I, and K, whatever may be the description either in the voters' list or assessment roll as to the qualification or character in respect of which he is entered upon the list or roll. 52 V. c. 5, s. 1.

Voters lists oaths in districts where this Act is not in force.

[15—(*b*)] In any Electoral District, or part of any Electoral District, in which [this Act] is not in force, the voters' lists to be used shall be prepared in the same manner as they were prior to the [23rd day of March, 1889,] and the oaths to be taken in such Electoral or part of Electoral Districts shall be those provided for by *The Ontario Election Act*. 52 V. c. 5, s. 2.

SCHEDULE.

FORM A.

FORM OF AFFIDAVIT BY PERSON CLAIMING TO BE PLACED ON THE ASSESSMENT ROLL AS A VOTER.

I, , make oath and say, as follows:

I am a British subject, (by birth, or naturalization), and I have resided in this Province for the nine months next preceding the day of in the present year (*the day to be filled in here is the date on which by Statute or by-law the Assessor is to begin making his roll.*

I was at the said date in good faith a resident of and domiciled in (*giving name of municipality for which the assessor is making his roll*), and I have resided therein continuously from the said date, and I now reside therein at (*here give the deponent's residence by the number thereof (if any) and the street or locality whereon or wherein the same is situated, if in a city, town or village If the residence is in a township, give the concession wherein, and the lot or part of the lot whereon it is situated.*)

I am of the full age of 21 years, and am not disqualified from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at in the County of , this day of , 18 } (*Signature of Voter*).

(*Signature of J. P., etc.*)

(*This Oath may be taken before any Assessor or any Justice of the Peace, Commissioner for taking Affidavits, or Notary Public.*)

FORM B.

FORM OF AFFIDAVIT FOR SAME PURPOSE AS FORM A,

But where the person has been temporarily absent from the municipality.

I, , make oath and say as follows:

I am a British subject (by birth, or naturalization) and I have resided in this Province for the nine months next preceding the day of in the present year, (*the day to be filled in here is the date on which by statute or by-law the Assessor is to begin making his roll.*)

I was at the said date in good faith a resident of and domiciled in (*giving name of municipality for which the assessor is making his roll*) and have resided therein continuously from the said date, and I now reside therein at (*here give the deponent's residence by the number thereof if any, and the street or locality whereon or wherein the same is situated if in a city, town or village. If the residence is in a township, give the concession wherein and the lot or part of lot whereon it is situated.*)

And I have not been absent from this Province during the said nine months, except occasionally or temporarily in the prosecution of my occupation as (*mentioning as the case may be a lumberman, or mariner, or fisherman, or in attendance as a student in an institution of learning in the Dominion of Canada naming the institution if absent as student*).

I am of the full age of 21 years, and am not disqualified from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at in the County of , this day of , 18 . (*Signature of J. P. or Commissioner, etc.*) } (*Signature of Voter.*)

(*This Oath may be taken before any Assessor or any Justice of the Peace, Commissioner for taking Affidavits, or Notary Public.*)

FORM C.

FORM OF OATH, *in ordinary cases*, TO BE ADMINISTERED AT AN ELECTION TO VOTERS BY VIRTUE OF MANHOOD SUFFRAGE.

Where the voter was a resident for nine months before the Assessor began his roll.

You swear that you are the person named, or intended to be named, by the name of in the list of voters now shown to you.

That you are a British subject by birth, or naturalization, and that you have resided in this Province for the nine months next preceding the day fixed by law for beginning to make the assessment roll on which the voters' list now shown to you is based.

That you were at the said date in good faith a resident of and domiciled in this municipality in which you are now voting.

That you have resided in the electoral district in and for which

this election is now being held continuously from the said date and that you are now actually residing and domiciled therein.

That you are entitled to vote at this election and in this municipality.

That you are of the full age of 21 years;

That you have not voted before at this election, either at this or any other polling place;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly paid or promised anything to any person, either to induce him to vote, or to refrain from voting at this election.

So help you God.

FORM D.

FORM OF OATH FOR SAME PURPOSE AS FORM C.

Where the voter was temporarily absent from the Province.

You swear that you are the person named or intended to be named by the name of in the list of voters now shown to you;

That you are a British subject by birth, or naturalization, and that you have resided in this Province for the nine months next preceding the day fixed by law for beginning to make the assessment roll on which the voters' list now shown to you is based.

That you were at the said date in good faith a resident of and domiciled in this municipality in which you are now voting.

That you have resided in the electoral district in and for which this election is now being held continuously from the said date, and that you are now actually resident and domiciled therein.

That you have not been absent from this Province during the said nine months, or at any time since, except occasionally or temporarily, in the prosecution of your occupation as (*mentioning, as the case may be, a lumberman, or mariner, or fisherman, or in attendance as a student in an institution of learning in the Dominion of Canada naming the institution*).

That you are entitled to vote at this election and in this municipality.

That you are of the full age of 21 years;

That you have not voted before at this election, either at this or at any other polling place, that you have not received anything, nor has anything been promised you either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote, or refrain from voting at this election.

So help you God.

FORM E.

FORM OF OATH, *in ordinary cases*, TO BE TAKEN AT AN ELECTION BY VOTER ON A SUPPLEMENTARY LIST OF VOTERS,

WHERE ADDITIONS HAVE BEEN MADE TO A CITY, TOWN, OR VILLAGE, OR A NEW VILLAGE HAS BEEN FORMED COMPOSED OF TERRITORY SITUATED IN TWO OR MORE ELECTORAL DISTRICTS,

Where the voter was a resident for nine months before the Assessor began his roll.

You swear that you are the person named or intended to be named by the name of , in the supplementary list of voters now shown to you.

That you resided in the Province for nine months next preceding the day fixed by law for beginning to make the assessment roll on which the voters' list now shown to you is based.

That you were at the said date in good faith a resident of and domiciled in (*giving name of municipality*) being in territory now part of this municipality, and have ever since continuously resided in territory now included within the electoral district in and for which this election is now being held.

That you are now actually and in good faith a resident of and domiciled within the electoral district in and for which this election is now being held.

That you are entitled to vote at this election and in this municipality ;

That you are a British subject by birth, or naturalization, and of the full age of 21 years ;

That you have not voted before at this election, either at this or any other polling place ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election or for loss of time, travelling expenses, hire of team, or any other service connected therewith ;

And that you have not directly or indirectly paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election.

So help you God.

FORM F.

FORM OF OATH FOR SAME PURPOSE AS FORM E,

But where the voter has been temporarily absent from the municipality.

You swear that you are the person named or intended to be named by the name of in the supplementary list of voters now shown to you.

That you resided in the Province for the nine months next pre-

ceding the day fixed by law for beginning to make the Assessment Roll on which the voters' list now shown to you is based.

That on the said date you were in good faith a resident of and domiciled in (*giving name of municipality*), being territory now part of this municipality, and have since continuously resided in territory now included within the electoral district in and for which this election is now being held.

That you have not been absent from this Province during the said said nine months, or at any time since, except occasionally or temporarily, in the prosecution of your occupation as (*mentioning, as the case may be, a mariner, or lumberman, or fisherman, or in attendance as a student in an institution of learning in the Dominion of Canada, naming the institution*).

That you are now actually and in good faith a resident of and domiciled within the electoral district, in and for which this election is now being held.

That you are entitled to vote at this election and in this municipality ;

That you are a British subject (by birth, or naturalization) and of the full age of 21 years ;

That you have not voted before at this election, either at this or any other polling place ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any service connected therewith ; and that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election.

So help you God.

(MEMORANDUM : Where a voter does not come within the nine months' provision in the foregoing forms, but has resided within the Province for the twelve months next preceding the time up to which a complaint may be made to the County Judge, under *The Voters' Lists Act*, or this Act, the following forms may be used) :—

FORM G.

FORM OF OATH IN ORDINARY CASES TO BE ADMINISTERED AT AN ELECTION TO A VOTER BY VIRTUE OF MANHOOD SUFFRAGE.

WHERE HE WAS RESIDENT FOR TWELVE MONTHS PRECEDING THE TIME FOR MAKING APPEALS TO THE COUNTY JUDGE TO BE PLACED ON VOTERS' LIST.

You swear that you are the person named or intended to be named by the name of in the list of voters shown to you ;

That you are a British subject by birth, or naturalization, and that you have resided in this Province for the twelve months next

preceding the last day on which, under the Act relating to Voters' Lists, complaint could be made to the County Judge to insert in the voters' list now shown to you the name of any person omitted therefrom;

That you were at the said date in good faith a resident of and domiciled in this municipality in which you are now voting;

That you have resided in the electoral district in and for which this election is now being held continuously from the said date, and are now actually resident and domiciled therein;

That you are entitled to vote at this election and in this municipality;

That you are of the full age of 21 years;

That you have not voted before at this election, either at this or any other polling place;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote, or to refrain from voting at this election.

So help you God.

FORM H.

FORM OF OATH FOR THE SAME PURPOSE AS FORM G, BUT WHERE THE VOTER WAS TEMPORARILY ABSENT.

You swear that you are the person named or intended to be named by the name of in the list of voters now shown to you;

That you are a British subject by birth, or naturalization, and that you have resided in this Province for the twelve months next preceding the last day on which, under the Act relating to Voters' Lists, complaint could be made to the County Judge to insert in the voters' list now shown to you the name of any person omitted therefrom;

That you were at the said date in good faith a resident of and domiciled in this municipality in which you are now voting;

That you have resided in the electoral district in and for which this election is now being held continuously from the said date, and are now actually resident and domiciled therein;

That you have not been absent from this Province during the said twelve months or at any time since, except occasionally or temporarily, in the prosecution of your occupation as (*mentioning, as the case may be, a lumberman, or mariner, or fisherman, or in attendance as a student in an institution of learning in the Dominion of Canada, naming the institution*);

That you are entitled to vote at this election and in this municipality;

That you are of the full age of 21 years;

That you have not voted before at this election, either at this or at any other polling place, that you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote, or to refrain from voting at this election.

So help you God.

FORM I.

FORM OF OATH IN ORDINARY CASES TO BE TAKEN BY VOTER ON A SUPPLEMENTARY LIST OF VOTERS.

WHERE ADDITIONS HAVE BEEN MADE TO A CITY, TOWN, OR VILLAGE, OR A NEW VILLAGE HAS BEEN FORMED COMPOSED OF TERRITORY SITUATED IN TWO OR MORE ELECTORAL DISTRICTS.

AND WHERE THE VOTER WAS RESIDENT FOR TWELVE MONTHS PRECEDING THE TIME FOR MAKING APPEALS TO THE COUNTY JUDGE TO BE PLACED ON VOTERS' LIST.

You swear that you are the person named or intended to be named by the name of in the supplementary list of voters now shown to you;

That you resided in this Province for twelve months next preceding the last day on which, under the Act relating to Voters' Lists, complaint could be made to the County Judge to insert in the voters' list now shown to you the name of any person omitted therefrom;

That you were at the said date in good faith a resident of and domiciled in (*giving name of municipality*), being territory now part of this municipality, and have ever since continuously resided in territory now included within the electoral district in and for which this election is now being held;

That you are now actually and in good faith a resident of and domiciled within the electoral district in and for which this election is now being held;

That you are entitled to vote at this election and in this municipality;

That you are a British subject (by birth, or naturalization) and of the full age of 21 years;

That you have not voted before at this election, either at this or any other polling place;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote, or to refrain from voting at this election.

So help you God.

FORM K.

FORM OF OATH FOR SAME PURPOSE OTHERWISE AS FORM I.

In case of temporary absence.

You swear that you are the person named or intended to be named by the name of in the supplementary list of voters now shown to you; that you resided in this Province for the twelve months next preceding the last day on which, under the Act relating to Voters' Lists, complaint could be made to the County Judge to insert in the voters' list now shown to you the name of any person omitted therefrom; that at the said date you were in good faith a resident of and domiciled in (*giving name of municipality*), being territory now part of this municipality, and have since continuously resided in territory now included within the electoral district in and for which this election is now being held;

That you are now actually a resident of and domiciled within the electoral district in and for which this election is now being held;

That you have not been absent from this Province during the said twelve months or at any time since except occasionally or temporarily, in the prosecution of your occupation as (*mentioning, as the case may be, a mariner or lumberman, or fisherman, or in attendance as a student in an institution of learning in the Dominion of Canada, naming the institution*);

That you are now actually and in good faith a resident of and domiciled within the electoral district in and for which this election is now being held;

That you are entitled to vote at this election and in this municipality;

That you are a British subject (by birth, or naturalization) and of the full age of 21 years.

That you have not voted before at this election, either at this or any other polling place.

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any service connected therewith; and that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election.

So help you God.

51 Vict. cap. 33 (*a*).

An Act to regulate the closing of Shops and the Hours of Labour therein for Children and Young Persons.

Assented to 23rd March, 1888.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1.—(1) This Act may be cited as "*The Ontario Shops' Regulation Act, 1888.*" 51 V. c. 31, s. 1.

Interpretation.

2.—(1) Unless the context otherwise requires, the following words and expressions in this section and in any by-law passed under the provisions of this section, shall have the meaning hereby assigned to them respectively, that is to say :

"Shop" means any building or portion of a building, booth, stall, or place where goods are exposed or offered for sale by retail ; but not where the only trade or business carried on is that of a tobacconist, news-agent, hotel, inn, tavern, victualling house, or refreshment house, nor any premises wherein, under license, spirituous or fermented liquor is sold by retail for consumption on the premises.

"Closed" means not open for the serving of any customer ; provided that nothing in this section or in any by-law passed under authority thereof shall be deemed to render unlawful the continuance in a shop after the hour appointed for the closing thereof, of any customers who were in the shop immediately before that hour, or the serving of such customers during their continuance therein.

"Unincorporated village" shall mean any unincorporated village or settlement lying wholly within the limits

(*a*) The amendments made by 52 V. c. 44 are introduced into this Act.

of a township, and which, by by-law, the council of the township in which the same is situate shall, under a name and with boundaries to be declared and defined in and by such by-law, set apart from the remaining portion of the township in which the same is situate, for the purposes of this Act, and with the intent that such unincorporated village or settlement may be brought under the operation hereof."

"Local Council" means the municipal council of a city, town, or incorporated village, or the municipal council of any township within which is situate any unincorporated village, as the case may be.

"Municipality" means the city, town, or incorporated village, the municipal council whereof, either upon application made in that behalf or otherwise, passes any by-law under the provisions of this section, and also means any unincorporated village situate within any township, the municipal council of which township, either upon application made in that behalf or otherwise, passes any by-law under the provisions of this section. 52 V. c. 44, s. 2.

By-laws determining hours of closing.

(2) Any local council may by by-law require that during the whole or any part or parts of the year, all or any class or classes of shops within the municipality shall be closed, and remain closed on each or any day of the week at and during any time or hours between seven of the clock in the afternoon of any day and five of the clock in the forenoon of the next following day. 52 V. c. 44, s. 4.

Council to pass by-law on application of occupiers of shops.

(3) If any application is received by or presented to a local council, praying for the passing of a by-law requiring the closing of any class or classes of shops situate within the municipality, and the council is satisfied that such application is signed by not less than three-fourths in number of the occupiers of shops within the municipality and belonging to the class or each of the classes to which such application relates, the council shall, within one month after the receipt or presentation of such application, pass a by-law giving effect to the said application and requiring all shops within the municipality, belonging to the class or classes specified in the application, to be closed during the period of the year, and at the times and hours mentioned in that behalf in the application.

(4) A local council may by by-law make regulations as to the form of any application to be made under the preceding subsection, and as to the evidence to be produced respecting the proportion of persons signing such application, and as to the classification of shops for the purposes of this section, and it shall not be compulsory upon a local council to pass a by-law under said preceding sub-section unless and until, with respect to the application made therefor, all such regulations have been duly observed. Regulations as to form and proof of applications.

(5) If the application mentioned in the next preceding two sub-sections is delivered to the clerk of a council, it shall be deemed to have been presented to and received by the council within the meaning of said preceding sub-sections. Presentation of application.

(6) Every such by-law shall take effect at a date named therein, being not less than one nor more than two weeks after the passing thereof, and shall before that date be published in such manner as to the local council passing the by-law may appear best fitted to insure the publicity thereof. Commencement and publication of by-law.

(7) A local council shall not have the power to repeal a by-law passed pursuant to sub-section 3 of this section, except as provided in the next following sub-section. By-laws to be repealed only as provided in sub-sec. 8.

(8) If at any time it is made to appear to the satisfaction of a local council that more than one-third in number of the occupiers of shops to which any by-law passed by the council under the authority of sub-section 3 of this section relates, or of any class of such shops, are opposed to the continuance of such by-law, the local council may repeal the said by-law, or may repeal the same in so far as it affects such class of shops as aforesaid, but any such repeal shall not affect the power of the council to thereafter pass another by-law under any of the provisions of this section. When by-law may be repealed.

(9) A shop in which trades of two or more classes are carried on, shall be closed for the purpose of all such trades at the hour at which it is by any such by-law required to be closed for the purpose of that one of such trades as is the principal trade carried on in said shop. Closing of shops in which several trades are carried on.

(10) A pharmaceutical chemist, or chemist and druggist shall not nor shall any occupier of or person employed in or about a shop in any village be liable to any fine, penalty, or punishment under any such by-law, for supplying medicines, drugs, or medical appliances after the hour appointed by such by-law for the closing of shops : but nothing herein contained Exception as to sales by druggists.

shall be deemed to authorize any person whomsoever to keep open shop after the said hour. 51 V. c. 33, s. 2 (3-10).

Supplying articles to lodgers.

(11) Nothing in any such by-law contained shall render the occupier of any premises liable to any fine, penalty, or punishment, for supplying any article to any person lodging in such premises, or for supplying any article required for immediate use by reason or because of any emergency arising from sickness, ailment, or death; or for supplying or selling any article to any person for use on, or in, or about, or with respect to any steamboat or sailing vessel which at the time of such supplying or selling is either within or in the immediate neighbourhood of the municipality in which said premises are situate, or for use by or with respect to any person employed or engaged on, or being a passenger on or by any such steamboat or sailing vessel; but nothing herein contained shall be deemed to authorize any person whomsoever to keep open shop after the hour appointed by such by-law for the closing of shops. 51 V. c. 33, s. 2 (11); 52 V. c. 44, s. 3.

Agent or servant to be liable to penalty.

(12) Where an offence for which the occupier of a shop is liable under any such by-law to any fine, penalty or punishment, has in fact been committed by some agent or servant of such occupier, such agent or servant shall be liable to the same fine, penalty or punishment as if he were the occupier.

Power of occupier to exempt himself on conviction of actual offender.

(13) Where the occupier of a shop is charged with an offence against any such by-law, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said occupier proves to the satisfaction of the Court that he has used due diligence to enforce the execution of the provisions of the by-law, and that the said other person committed the offence in question without his knowledge, consent or connivance, or wilful neglect or default, the said occupier shall be exempt from any fine, penalty or punishment; but the said other person shall thereupon be summarily convicted of such offence and shall be liable to the same fine, penalty or punishment therefor as if he were the occupier.

By-laws to be deemed to have been passed under Rev. Stat. c. 184.

(14) Subject to the provisions in this section contained, any by-law passed by a local council under the authority of this Act shall for all purposes whatsoever be deemed and taken to have been passed under and by authority of *The Municipal Act* and as if this section had formed part of *The*

Municipal Act; and this section and *The Municipal Act* shall be read and construed together as if forming one Act. 51 V. c. 33, s. 2 (12-14.)

Powers of township councils.

(15) The municipal council of every township shall, with respect to any portion of such township which, by by-law, such council has set apart as an unincorporated village under the provisions of this Act, have all the rights and powers conferred by this Act on the council of any city, town or incorporated village, and may under this Act pass by-laws which shall apply exclusively and only to that portion of the township so set apart as an unincorporated village.

Local councils may pass by-laws containing different provisions for different localities.

(16) A by-law passed under this section for the closing of all or any class or classes of shops within an unincorporated village may as to any or all of its terms and provisions differ from any other by-law passed by the same local council for the closing of all or any class or classes of shops in any other unincorporated village within the same township.

By-law invalid as to one class may be good as to others.

(17) Notwithstanding that the occupiers of any class of shops required to be closed by a by-law passed, or purporting to be passed, under or pursuant to the provisions of sub-section 3 of this section may not have presented an application, as required by said sub-section, for the passing of such by-law, every such by-law shall, nevertheless, and to all intents and for all purposes, be held and deemed to be valid and effectual as respects any other, and the occupiers of any other class of shops thereby required to be closed in conformity with any application in that behalf made or presented to the council by the requisite number of occupiers of said last mentioned class of shops.

Burden of proof.

(18) The onus of proving that an application in compliance with sub-section 3 of this section had not been presented to a local council by the requisite number of the occupiers of any class of shops required to be closed by a by-law passed or purporting to be passed under or pursuant to the provisions of said sub-section shall, in all cases and for all purposes, be upon the person asserting that such application had not been so presented. 52 V. c. 44, s. 5.

Commencement of section.

3.—(1) This section shall come into operation on the first day of January next after the passing of this Act.

Interpretation.

(2) In this section, unless the context otherwise requires,

(a) The word "shop" shall mean any retail or wholesale shop, store, booth, stall, or warehouse in which assistants are employed for hire.

(b) The expression "young person" shall mean any boy under the age of fourteen years, and any girl under the age of sixteen years, as the case may be; but shall not mean or include any person whose usual and ordinary employment in or about a shop is that of a driver of a delivery waggon, van or vehicle;

(c) The word "employer" shall mean any person who in his own behalf, or as the manager, superintendent overseer or agent for any person, firm, company or corporation, has charge of any shop and employs persons therein;

(d) The word "week" shall mean the period between midnight on Sunday night and midnight on the succeeding Saturday night;

(e) The word "parent" shall mean a parent or guardian of, or a person having the legal custody of, or the control over, or having direct benefit from the wages of a child or young girl.

Employment of young persons.

(3) A young person shall not be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week; nor shall a young person be so employed during any Saturday for more than fourteen hours, including meal times, nor during any other day for more than twelve hours, including meal times, unless a different apportionment of the hours of labour per day has been made for the sole purpose of giving a shorter day's work on some other day of the week; and there shall be allowed as meal times to every young person so employed not less than one hour for the noon day meal on each day, and to every young person so employed on any day to any hour later than seven of the clock in the afternoon, not less than forty-five minutes for another or evening meal, between five and eight of the clock in the afternoon.

Employment of young persons who have on the same day been employed in a factory.

(4) A young person shall not to the knowledge of his employer, be employed in a shop who has been previously on the same day employed in any factory as defined by *The Ontario Factories' Act* (a) for the number of hours permitted

(a) See Rev. Stat. c. 208, ss. 2 and 6.

by the said Act, or for a longer period than will complete such number of hours.

(5) Where any young person is employed in or about a shop contrary to the provisions of this section, the employer shall, upon conviction thereof, be liable to a fine not exceeding $20 for each person so employed, with costs of the prosecution; and in default of immediate payment of such fine and costs, to be imprisoned in the common gaol of the county within which the offence was committed for a period not exceeding one month. Penalty imposed on employer.

(6) The parent of any young person employed in a shop in contravention of this section shall, unless such employment is without the consent, connivance or wilful default of such parent, be guilty of an offence in contravention of this Act, and shall for each offence, on summary conviction thereof, incur and pay a fine of not more than $20 and costs of prosecution, and in default of immediate payment of such fine and costs shall be imprisoned in the common gaol of the county wherein the offence was committed for a period not exceeding one month. Penalty imposed on parent.

(7) The occupier of any shop in which are employed females shall at all times provide and keep therein a sufficient and suitable seat or chair for the use of every such female, and shall permit her to use such seat or chair when not necessarily engaged in the work or duty for which she is employed in such shop; and any person offending against any of the provisions of this sub-section shall upon conviction thereof be liable to a fine not exceeding $20, with costs of the prosecution, and in default of immediate payment of such fine and costs, to be imprisoned in the common gaol of the county within which the offence was committed for a period not exceeding one month. Seats for use of employees.

(8) In every shop in which any young person is employed there shall be kept exhibited by the employer in a conspicuous place a notice referring to the provisions of this Act and stating the number of hours in the week during which a young person may lawfully be employed therein; and such notice may be according to Form A in the Schedule to this Act. Notice of hours of employment to be exhibited in shop.

(9) Where the employer of a young person, as defined in this section, is charged with an offence against any of the provisions of this section, he shall be entitled upon infor- Power of employer to exempt himself on

conviction of actual offender.

mation duly laid by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the Court that he has used due diligence to enforce the execution of the provisions of this sections, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the employer shall be exempt from any fine, penalty or punishment; but the said other person shall thereupon be summarily convicted of such offence, and shall be liable to the same fine, penalty or punishment therefor as if he were the employer.

Section not to apply when persons employed are at home.

(10) Nothing in this section shall apply to a shop where the only persons employed therein are at home, that is to say are members of the same family dwelling there, or to members of the employer's family dwelling in a house to which the shop is attached.

Proof of age of young person.

(11) Where a young person is, in the opinion of the Court apparently of the age alleged by the informant, it shall lie on the defendant to prove that the young person is not of that age.

Restriction as to cumulative penalties.

(12) A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger fine, penalty or punishment than the highest fine, penalty or punishment fixed by this section for the offence, except:—

(*a*) Where the repetition of the offence occurs after an information has been laid for the previous offence; or

(*b*) Where the offence is one of employing two or more young persons contrary to the provisions of this section.

Application of fine and penalties.

(13) All fines or penalties in money imposed or recovered under or in pursuance of this section shall be paid by the convicting Justices or Police Magistrate, as the case may be, to the treasurer of the township, city, town, or incorporated village wherein the offence for which the fine or penalty is imposed has been committed.

Limitation of time and general provisions as to summary proceedings.

(14) The following provisions shall have effect with respect to summary proceedings for offences and fines under this section;

(*a*) The information shall be laid within one month after the commission of the offence.

(*b*) The description of an offence in the words of this section, or in similar words, shall be sufficient in law.

(*c*) Any exception, exemption, proviso, excuse or qualification, whether it does or not accompany the description of the offence in this section, may be proved by the defendant, but need not be specified or negatived in the information; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.

(*d*) It shall be sufficient to allege that a shop is a shop within the meaning of this section, without more.

(*e*) It shall be sufficient to state the name of the ostensible employer or the title of the firm by which the employer employing persons in the shop is usually known.

(*f*) A conviction or order made in any matter arising under this section either originally or on appeal shall not be quashed for want of form.

Prosecutions and procedure.

(15) All prosecutions under this section may be brought and heard before any of Her Majesty's Justices of the Peace in and for the county where the penalty was incurred or the offence was committed or wrong done, and in cities, towns, and incorporated villages in which there is a Police Magistrate, before such Police Magistrate; and save where otherwise provided by this section the procedure shall be governed by *The Act respecting Summary Convictions before Justices of the Peace and Appeals to General Sessions.* Rev. Stat. c. 74.

By laws confirmed.

[4.] This Act [52 V. c. 44] and the principal Act [51 V. c. 31] shall be read and construed as one Act, and as if the amendments [made by 52 V. c. 44 in the Act 51 V. c. 31] had always formed part thereof, and all by-laws heretofore passed by any local council shall be read and construed accordingly. 51 V. c. 44, s. 6.

SCHEDULE.

(FORM A.)

"THE ONTARIO SHOPS' REGULATION ACT, 1888."

The following are sub-sections 2, 3, 4, 5 and 6 of section 3 of the above-mentioned Act:—

(2) In this section, unless the context otherwise requires.

(*a*) The word "shop" shall mean any retail or wholesale shop, store, booth, stall, or warehouse in which assistants are employed for hire;

(*b*) The expression "young person" shall mean any boy under the age of fourteen years, and any girl under the age of sixteen years, as the case may be; but shall not mean nor include any person whose usual and ordinary employment is that of a driver of a delivery waggon, van or vehicle;

(*c*) The word "employer" shall mean any person who in his own behalf, or as the manager, superintendent, overseer, or agent for any person, firm, company or corporation, has charge of any shop and employs persons therein;

(*d*) The word "week" shall mean the period between midnight on Sunday night and midnight on the succeeding Saturday night;

(*e*) The word "parent" shall mean a parent or guardian of, or a person having the legal custody of or the control over, or having direct benefit from the wages of a child or young girl.

(3) A young person shall not be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week; nor shall a young person be so employed during any Saturday for more than fourteen hours, including meal times, nor during any other day for more than twelve hours, including meal times, unless a different appointment of the hours of labour per day has been made for the sole purpose of giving a shorter day's work on some other day of the week; and there shall be allowed as meal times to every young person so employed not less than one hour for the noon day meal on each day, and to every young person so employed on any day, to any hour later than seven of the clock in the afternoon, not less than forty-five minutes for another or evening meal, between five and eight of the clock in the afternoon.

(4) A young person shall not, to the knowledge of his employer, be employed in a shop who has been previously on the same day employed in any factory as defined by "*The Ontario Factories' Act*" for the number of hours permitted by the said Act, or for a longer period than will complete such number of hours.

(5) Where any young person is employed in or about a shop contrary to the provisions of this section, the employer shall upon conviction thereof, be liable to a fine not exceeding $20 for each person so employed, with costs of the prosecution, and in default of immediate payment of such fine and costs, to be imprisoned in the common

gaol of the county within which the offence was committed, for a period not exceeding one month.

(6) The parent of any young person employed in a shop in contravention of this section shall, unless such employment is without the consent, connivance or wilful default of such parent, be guilty of an offence in contravention of this Act, and shall for each offence on summary conviction thereof incur and pay a fine of not more than $20 and costs of prosecution, and in default of immediate payment of such fine and costs shall be imprisoned in the common gaol of the county wherein the offence was committed for a period not exceeding one month.

(7) The occupier of any shop in which are employed females, shall at all times provide and keep therein a sufficient and suitable seat or chair for the use of every such female, and shall permit her to use such seat or chair when not necessarily engaged in the work or duty for which she is employed in such shop; and any person offending against any of the provisions of this sub-section shall, upon conviction thereof, be liable to a fine not exceeding $20, with costs of the prosecution, and in default of immediate payment of such fine and costs, to be imprisoned in the common gaol of the county within which the offence was committed for a period not exceeding one month.

52 Vict. cap. 3.

An Act respecting Voters' Lists.

Assented to 23rd March, 1889.

SHORT TITLE, s. 1 (1).
COMMENCEMENT OF ACT, s. 1 (2).
REPEAL, s. 1 (3).
INTERPRETATION, s. 2.
ALPHABETICAL LIST OF VOTERS TO BE MADE BY CLERK, ss. 3, 4.
DISTRIBUTION AND POSTING UP COPIES OF LIST, ss. 5-9.
REVISION OF LIST—
- Who may complain and on what grounds, s. 10.
- Powers and duties of Judge, ss. 11, 12, 21-24, 26, 27.
- Procedure, ss. 13, 14.
- List to be certified by Judge, ss. 15-17.
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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1.—(1) This Act may be cited as *The Ontario Voters' Lists Act, 1889;* and the expression "The Voters' Lists Act,"

wherever the same occurs in either *The Ontario Election Act*, *The Assessment Act*, *The Manhood Suffrage Act*, or *The Municipal Act*, shall mean this Act.

Commencement of Act.

(2) Subject to the other provisions in this section contained, this Act shall come into force and effect immediately after the passing thereof, in every municipality in which by law the date for the return of the assessment roll by the assessor is not later than the thirtieth day of April and in all other municipalities on the first day of July next after the passing thereof.

Rev. Stat. c. 8, repealed.

(3) *The Voters' Lists Act*, being Chapter 8 of the Revised Statutes of Ontario, 1887, is hereby repealed; save and except, that, for all purposes and to all intents, every matter and thing whatsoever relating to or affecting

(*a*) Any voters' list based upon or prepared from any assessment roll which, within the meaning of *The Assessment Act*, was finally revised and corrected prior to the first day of February, 1889; or

(*b*) The right to have the name of any person inserted in or omitted, or expunged, from any such voters' list, as a voter;

shall be continued, and shall be dealt and proceeded with as if this Act and *The Manhood Suffrage Act* had not been passed; and all rights, liabilities, duties, forms and proceedings whatsoever, with respect to any of the matters or things aforesaid, shall be subject and conform to, and shall be regulated and controlled by the provisions of said Chapter 8 of *The Revised Statutes of Ontario, 1887*, and *The Ontario Election Act*, as the same were prior to the passing of *The Manhood Suffrage Act*.

INTERPRETATION.

Interpretation.

2. In this Act, unless a contrary intention appears:

"Election;" "To vote;" "Corrupt practices."

1. "Election," "To Vote," "Corrupt Practices," shall respectively have the meaning given thereto by section 2 of *The Ontario Election Act*;

"Farmer's son."

2. "Farmer's Son" shall have the meaning given thereto by *The Municipal Act*;

"Municipal election."

3. "Municipal election" shall mean an election for a member to a municipal council, within the meaning of *The Municipal Act*.

"Voter." 4. "Voter" shall mean a person entitled to be a voter, or to be named in the voters' list as qualified to be a voter either at an election of a member of the Legislative Assembly within the meaning of *The Manhood Suffrage Act*, or at any municipal election, as the case may be;

"List;" "Voters' list." 5. "List," "Voters' List," shall respectively mean the alphabetical list referred to in section 3 of this Act;

"Scrutiny." 6. "Scrutiny" shall mean any scrutiny of the votes polled at an election within the meaning of section 74 and the next succeeding nine sections of *The Ontario Controverted Elections Act*; and

"Clerk of the Peace;" "County Judge." 7. "Clerk of the Peace" shall mean the Clerk of the Peace for, and "County Judge" shall mean the Judge of the County Court for the county or union of counties within which lies the municipality for or in respect of which the voters' list is made; and

"Roll;" "Assessment roll." 8. "Roll," "assessment roll," shall respectively mean an assessment roll within the meaning of *The Assessment Act*.

VOTERS' LISTS AND COPIES.

Clerk to make list of voters. **3.**—(1) The clerk of each municipality shall, immediately after the final revision and correction of the assessment roll in every year, make a correct alphabetical list in three parts (Form 1) of all persons being of the full age of twenty-one years and subjects of Her Majesty by birth or naturalization, and appearing by the assessment roll to be entitled to be voters in the municipality, prefixing to the name of each person his number upon the roll.

First Part. (2) The first of the three parts shall contain the names, in alphabetical order, of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the municipality at both municipal elections and elections for members of the Legislative Assembly.

Second Part. (3) The second part shall contain the names, in alphabetical order, of all other male persons of full age and subjects as aforesaid, and of all widows and unmarried women of full age and subjects as aforesaid, and appearing on the assessment roll to be entitled to vote in the municipality at municipal elections only, and not at elections for members of the Legislative Assembly.

(4) The third part shall contain the names, in alphabetical order, of all other male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the municipality at elections for members of the Legislative Assembly only, and not at municipal elections. Third Part.

(5) The name of the same person shall not be entered more than once in any such part. Name to be entered once only.

(6) Where a municipality is divided into polling subdivisions the list (to be made in three parts as aforesaid) shall be made for each of the subdivisions. Lists for polling subdivisions.

(7) In the case of a person qualified to vote under the provisions of *The Manhood Suffrage Act*, the clerk shall opposite the name of such person in the proper column of the voters' list, state that fact either by inserting in such column the words "Manhood Franchise" or the letters "M. F." Qualification under 51 V. c. 4.

(8) Where the qualification of a person to be a voter at a municipal election is in respect of real property, the clerk shall, opposite the name of the person, insert, in the proper column of the voters' list, the number of any lot or other proper description of any parcel of real property in respect of which each person is so qualified; adding thereto, where the person is so qualified in respect of more than one such lot or parcel, the words "and other premises;" Qualification in respect of real property.

(9) In the case of a person being a farmer's son within the meaning of *The Municipal Act*, the clerk shall also, opposite the name of such person, in the proper column of the voters' list, state that fact either by inserting in such column the words "Farmer's Son," or the letters "F. S." Qualification of farmer's son.

(10) Where a ward of any municipality is divided into polling subdivisions, and it appears by the assessment roll that a person is assessed in each of two or more polling subdivisions in the ward for property sufficient to entitle him to be a voter at a municipal election, the clerk shall enter his name on the list of voters in one subdivision only, and shall, as required by the preceding subsection, insert opposite his name the additional words "and other premises;" and where within the knowledge of the clerk, a person resides in one of the polling subdivisions, his name shall be entered as aforesaid in the list of voters for that polling subdivision. Entry where voter assessed in several divisions of same ward.

(11) Where it appears by the assessment roll that a person is assessed for property within the municipality sufficient to Provision where property partly

in one subdivision and partly in another.

entitle him to be a voter at a municipal election, but that such property lies partly within the limits of one subdivision and partly within another or others, the clerk shall enter his name on the list of voters in one of the subdivisions only in which the property is situate, with the following words added: "Partly qualified in subdivision No. ."

Income qualification.

(12) If the qualification to be a voter at a municipal election is in respect of taxable income, the clerk shall in the proper column of the voters' list, state that fact, and the place at which the voter resides in the municipality.

Entry on list of persons assessed as householder, freeholder or tenant.

(13) The words Householder (H), Freeholder (F), and Tenant (T), appearing on the assessment roll pursuant to *The Assessment Act*, shall, for the purposes of this Act, be held to also mean respectively Occupant (Oc), Owner (O), or Tenant (T), and shall be so entered in the voters' list by the clerk of the municipality.

Entry on list of persons qualified under Manhood Suffrage Act or as farmer's sons.

(14) Where upon the assessment roll, opposite the name of any person entered in such roll, there are inserted the letters "M. F." to indicate that such person is qualified to be a voter under *The Manhood Suffrage Act*, or the letters "F. S." to indicate that such person is a farmer's son, within the meaning of *The Municipal Act*, the like letters inserted opposite the name of such person in the proper column of the voters' list will be taken to indicate that he is entitled to be a voter and to be entered in said list either under *The Manhood Suffrage Act*, or *The Municipal Act*, as the case may be.

When assessment roll to be regarded as finally revised.

(15) An assessment roll shall be understood to be finally revised and corrected when it has been so revised and corrected by the Court of Revision for the municipality, or by the Judge of the County Court in case of an appeal as provided in *The Assessment Act*, or when the time during which the appeal may be made has elapsed, and not before.

P. O. address of voter to be entered on list. Rev. Stat. c. 52.

4. The clerk of every township municipality, in making out the list shall, besides complying with section 23 of *The Jurors' Act*, insert in the list (Form 1) a schedule containing the name, numbered consecutively, of every post office which by the assessment roll appears to be or within the knowledge or belief of the clerk is, the proper post office address of any person entered in the list, and in making out the list shall, according to the form and in the proper column therefor insert opposite the name of every person entered in the list the consecutive number which according to the schedule is

that of the proper post office address of the person, so far as the address appears by the assessment roll, or is within the knowledge or belief of the clerk; but no appeal or complaint on the ground of any error, mistake or omission in or from the list in respect of any matter or thing by this section directed to be inserted therein, shall be made or allowed by, or under this Act.

Copies of list to be printed and distributed.

5. Immediately after the clerk has made the alphabetical list, and within forty days in cities and in other municipalities within thirty days after the final revision and correction of the assessment roll, the clerk shall cause at least two hundred copies of the list to be printed (in pamphlet form where practicable), and forthwith shall cause one of the printed copies to be posted up, and to be kept posted up in some conspicuous place in his own office, and deliver or transmit by post, by registered letter, or by parcel post, registered, three copies to each Judge of the County Court of the county to which for judicial purposes the municipality belongs; and two copies to each of the following persons, that is to say:—

(*a*) Every member of the Municipal Council of the Municipality except the Reeve;

(*b*) The Treasurer thereof;

(*c*) The Sheriff of the County;

(*d*) The Clerk of the Peace;

(*e*) Every Postmaster in the Municipality;

(*f*) Every Head Master or Mistress of a Public or Separate School in the Municipality.

Clerk to transmit copies to certain persons.

6. The Clerk of the Municipality shall forthwith also deliver or transmit by post, by registered letter, or by parcel post, registered, ten copies to each of the following persons, that is to say:—

(*a*) The Member of the House of Commons for the Electoral District in which the Municipality or any part thereof lies;

(*b*) The Member of the Legislative Assembly for the Electoral District in which the Municipality or a part thereof lies;

(c) Every candidate for whom votes were given at the then last election of a member for the House of Commons and for the Legislative Assembly respectively; and

(d) The Reeve of the Municipality.

Clerk to certify as to certain matters on each copy of list.

7. Upon each of the copies so sent shall be a printed or written certificate (Form 2) over the name of the clerk, stating that the list is a correct list of all persons appearing by the last revised assessment roll of the municipality to be entitled to vote at elections for Members of the Legislative Assembly, and at municipal elections in the municipality; and further, calling upon all electors to examine the list, and, if omissions or other errors are perceived therein, to take immediate proceedings to have the errors corrected according to law.

Copies to be posted up by Sheriffs, Clerks of the Peace, teachers and post masters.

8. The Sheriff shall immediately upon the receipt of his copies cause one of them to be posted up in a conspicuous place in the Court-House; the Clerk of the Peace, upon receipt of his copies, shall cause one of them to be posted in a conspicuous place in his office; every Public or Separate School Head Master or Mistress shall in like manner post up one of his or her copies on the door of the school-house; and every Postmaster shall post up one of his copies in his post-office.

Clerk to publish notice of transmission and posting up of list.

9. The Clerk shall also forthwith cause to be inserted in some newspaper published in the municipality, or in case no newspaper is published in the municipality, then in some newspaper published either in the nearest municipality in which one is published, or in the County Town, a notice (Form 3), signed by him, which shall state that he has delivered or transmitted the copies of the list as directed by this Act, and shall also mention the date of the first posting up of the list in his office. One insertion of the notice shall be sufficient.

REVISION OF LISTS.

Revision of list by County Judge.

10.—(1) The list shall be subject to revision by the County Judge, at the instance of any voter or person entitled to be a voter in the municipality for which the list is made, or in the electoral district in which the municipality is situate, on the ground of the names of voters being omitted from the list, or being wrongly stated therein, or of names of persons being inserted on the list who are not entitled to be voters;

Upon such revision the assessment roll shall not be conclusive evidence in regard to any particular, whether the matter on which the right to be a voter depends had or had not been brought before the Court of Revision, or had or had not been determined by that Court;

Upon such revision no person shall be disentitled to have his name entered on the list, either by reason of his having omitted to make, sign or deliver any statement or affidavit required by the provisions of either *The Assessment Act* or *The Manhood Suffrage Act*, to be so made, signed or delivered by him, or by reason of his name not having been entered on the assessment roll. Rev. Stat. c. 193; 51 V. c. 4.

The decision of the Judge under this Act, in regard to the right of any person to vote, or as to the right to insert in or strike from the list the name of any person as a voter, shall be final so far as regards such person.

(2) A complaint or an appeal (Form 4) may be made on the ground of any person whose name is entered on the list being one of those who are disqualified or incompetent to vote under *The Manhood Suffrage Act* or *The Ontario Election Act*, as varied and modified by *The Manhood Suffrage Act*. Appeal in case of persons disqualified under 51 V. c. 4, or under Rev. Stat. c. 9.

(3) If before the final revision and correction of the assessment roll, a person named in the list of voters as entitled to be a voter at a municipal election, has died or has parted with the property in respect of which his name was entered in the voters' list, the person who, at the time of the final revision and correction, was in possession of the property shall, if otherwise qualified to be a voter at a municipal election, be entitled to apply to (Form 5) the Judge to be entered on the list, in respect of the said property, instead of the person first named in this section; Applications by persons who have acquired property since assessment.

The proceedings to be taken in such case shall be the same as in cases of appeals under this Act.

(4) Any person who is rated, or entered, or entitled or liable to be rated, or entered on the assessment roll, either as a farmer's son, or for real property or income of the amount requisite to entitle him to vote at municipal elections, and who will be of the age of twenty-one years at any time within sixty days from the final revision and correction of the assessment roll, shall have the right to apply to the Judge Persons who will be of age within 60 days from revision.

to have his name entered upon the voters' list, or upon the assessment roll and the voters' list, as entitled to vote at municipal elections.

Right to apply and complain.

(5) Any person whomsoever entitled to be assessed or entered or named in the assessment roll of a municipality, either under *The Assessment Act*, or *The Municipal Act*, or *The Manhood Suffrage Act*, shall, in all respects and for all purposes, have the right to apply and complain to the Judge on the revision of the voters' lists, and to have his name entered and inserted in the voters' list as entitled to be a voter.

Persons entitled to be entered on roll without request.

(6) Any person whomsoever entitled to be assessed or to have his name entered in the assessment roll of a municipality, shall be so assessed and shall have his name so entered without any request in that behalf; and a person entitled to be entered in the assessment roll or in the voters' list based thereon, or to vote or to be a voter in the electoral district in which the municipality is situate, shall, in order to have the name of any other person entered and inserted in the assessment roll, or list of voters, as the case may be, have for all purposes the same right to apply, complain or appeal to a Court or a Judge in that behalf, as such other person would or can have personally.

Entry of persons becoming qualified after completion of roll.

(7) Any person who, since the day upon which by statute, or by by-law, the assessment roll is returnable to the Clerk of the municipality, and before the time for appealing against the Voters' List or of giving notice of application to the Judge to have the names of persons entered upon the Voters' List under this Act shall have expired, has become possessed of the qualifications entitling him to vote, under the provisions of *The Manhood Suffrage Act*, shall be entitled to give, or any person whose name is on the list, or who has the qualification entitling him to have his name entered thereupon, under *The Manhood Suffrage Act*, may give the requisite notice or make application to the Judge to have the name of such first-mentioned person entered upon the Voters' List as entitled to be a voter under *The Manhood Suffrage Act*.

Powers of County Judge.

11. The County Judge, at any Court held by him for the revision of Voters' Lists under this Act, may, without a previous notice of appeal or complaint in that behalf, on an application made by or on behalf of the person named in the

lists, correct any mistake which shall be proved to him to have been made in compiling any Voters' List in respect of the name, or place of abode, or nature of the qualification, or the local or other description of the property, of a person entered on the list, and against or with respect to whose right to be entered on the list an appeal or complaint is either pending before or being heard by the Judge; but in any case evidence may be produced and given before the Judge that the person has no qualification or no sufficient qualification in law to entitle him to be a voter, and if the Judge, on the evidence, is of opinion that the person has not the qualification, he shall expunge and strike the name of such person from the list.

Judge to correct list as evidence may warrant

12. If on a complaint or appeal to strike out of the list the name of a person entered therein as a voter, the Judge, from the evidence produced and given before him, is of opinion that the person is entitled to be entered on the list in any character, or because of property or qualification other than that in which he is so already entered in the list, the Judge shall not strike the name of the person from the list, but shall make such corrections in the list as the evidence in his opinion warrants with respect to the right, character and qualification of the person to be a voter.

Proceedings on complaint of errors in list.

13—(1) A voter or person entitled to be a voter making a complaint of any error or omission in the list shall, within thirty days after the Clerk of the Municipality has posted up the list in his office, give to the clerk or leave for him at his residence or place of business, notice (Form 6) in writing of his complaint and intention to apply to the Judge in respect thereof;

If the office of clerk is vacant by reason of death, resignation or from any other cause, the notice may be given in like manner to the head of the council of the municipality;

The proceedings thereafter by the clerk, Judge, and parties respectively, and the respective powers and duties of the Judge, clerk and other persons, shall be the same, or as nearly as may be the same, as in the case of an appeal from the Court of Revision; but no deposit shall be required to be made before the complaint is heard or disposed of. (See Forms (7-12).

Duty of head of council when notified.

(2) If the notice is given to or left for the head of the council, he shall perform or cause to be performed such

necessary acts as should be performed by the clerk if there were one.

Notice of holding court for complaints.

(3) No Judge shall proceed with the holding of any Court for hearing complaints as aforesaid, unless and until notice (Form 10) of the time and place of holding the Court shall by the clerk have been published at least ten days before the sittings of the Court, in some newspaper published in the municipality, or if there be no such paper, then in some newspaper published in the nearest municipality in which one is published, or in the county town.

Compelling attendance of witnesses.

14—(1) Any person may obtain from the County Court a subpœna (Form 13), or from the County Judge an order, requiring the attendance at the Court for hearing complaints as aforesaid, at the time mentioned in the subpœna or order, of a witness residing or served with the subpœna or order, in any part of this Province; and requiring the witness to bring with him and produce at the Court any papers or documents mentioned in the subpœna or order, and every witness served with the subpœna or order shall obey the same, provided the allowance for his expenses, according to the scale allowed in Division Courts, is tendered to him at the time of service.

Person whose right is in question to attend.

(2) Any person complaining, or any person in respect of the insertion or omission of whose name a complaint is made, shall, if resident within the municipality, the list of which is the subject of complaint, or within the municipality in which the Court is held, upon being served with a subpœna or order therein, obey the same without being tendered or paid any allowance for his expenses; and the subpœna or order shall be deemed to have been sufficiently served upon any such person under the provisions of this section:

(*a*) If the subpœna or order is served upon him personally; or

(*b*) Where he has a known residence or place of business within the municipality, if a copy of the subpœna or order is left for him with some grown person, at such residence or place of business; or

(*c*) Where he has no known residence or place of business within the municipality, if a copy of the subpœna or order is mailed to him through the post-office, with the postage thereon prepaid, and addressed

to him at the post office address contained in any written affirmation or affidavit made by him under *The Manhood Suffrage Act*; or

(*d*) Where such person is a farmer's son, if a copy of the order or subpœna is left for him with some grown person at the residence of the farmer whose son he is.

Penalty for non-attendance.

(3) If a person, whose right to be a voter is the subject of enquiry, does not attend in obedience to the subpœna or order, the Judge, if he thinks fit, in the absence of satisfactory evidence as to the ground of the non-attendance, or as to the right of the person to be a voter, may on the ground of his non-attendance, strike his name off the list of voters, or refuse to place his name on the list of voters, as the case may require or impose a reasonable fine on him according to his discretion, or do both.

Names in supœna.

(4) Any number of names may be inserted in one subpœna or Judge's order, in any case of complaint.

Time within which list to be revised.

15. It shall be the duty of the County Judge so to arrange and proceed, and so to fix the sittings of the Court for the hearing of complaints against or in respect of any Voters' List, that the complaints shall be heard and determined, and the list finally revised, corrected and certified under this Act, within two months of the last day for making complaints.

List confirmed if no complaint within 30 days after list posted up by clerk.

16. In case no complaint respecting the list is received by the Clerk of the Municipality, within thirty days after he has posted up the list in his office, the clerk shall forthwith apply (Form 14), either in person or by letter, to the Judge to certify (Form 15) three copies of the list as being the revised list of voters for the municipality; and the Judge shall retain one of the certified copies of the list, and deliver or transmit by post, registered, one of the certified copies to the Clerk of the Peace for the county or union of counties within which the municipality lies, and one of the certified copies to the Clerk of the Municipality, to be kept by him among the records of his office.

Judge to make statement of alterations and certify copies of list after final revision.

17—(1) In case complaints are made as aforesaid, immediately after the list has been finally revised and corrected by the Judge, the Judge shall make or cause to be made, and shall sign, a statement (Form 16) in triplicate, setting forth the changes, if any, which he has made in the list; and shall

certify in triplicate (Form 17) a corrected copy of the list; and the statement in triplicate, and the corrected copies of the list shall, if the Judge so order, and under his directions and supervision, be prepared by the Clerk of the Municipality, and for that purpose the Judge shall forthwith, after the list has been so finally revised and corrected, transmit or deliver to the clerk all necessary papers and directions, which papers and directions together with the statement in triplicate and the corrected copies shall within, at latest, the week next after the list has been so finally revised and corrected as aforesaid, be re-transmitted and delivered by the clerk to the Judge, who thereupon shall immediately sign the statement and certify the corrected copies as aforesaid;

But should the statement and corrected copies not be re-transmitted and delivered by the clerk to the Judge within the time above mentioned, the Judge shall immediately thereafter make and sign the statement and certify the corrected copies of the list.

Disposal of certified copies and of statements.

(2) The Judge shall retain one of the certified copies and one statement, and shall deliver or transmit by post, registered, one of the certified copies and one statement to the Clerk of the Peace for the county or union of counties within which the municipality lies, and one of the certified copies and one statement to the Clerk of the Municipality, to be kept by him, among the records of his office.

Jurisdiction of District Judges and Stipendiary Magistrates.

18. The District Judges in the District of Algoma and in that part of the District of Thunder Bay not included in the Rainy River District, and the Stipendiary Magistrate of the District in the Districts of Muskoka, Parry Sound, Nipissing, Manitoulin and Rainy River, shall for the purposes of this Act have the jurisdiction, duties and powers which County Court Judges have in counties.

Certified list conclusive evidence.

19. Every voters' list which under this Act is certified by the County Judge, shall, upon a scrutiny, be final and conclusive evidence of the right of all persons named therein to vote at any election at which such list was or could have been legally used; except

Exceptions.

1. Persons guilty of corrupt practices at or in respect of the election in question on such scrutiny, or since the list was certified by the County Judge as aforesaid;

2. Persons who, at any time subsequently to the list being certified by the County Judge are or have been non-resident

either within the municipality to which the list relates, or within the electoral district for which the election is held, and who by reason thereof are, under the provisions of either *The Manhood Suffrage Act* or *The Ontario Election Act*, incompetent and disentitled to vote ;

3. Persons who, under sections 4, 5 and 6 of *The Ontario Election Act* are disqualified and incompetent to vote.

Municipality to provide a court room.

20. It shall be the duty of the municipality within which a Court is holden, to provide some suitable and convenient place, properly furnished, heated and lighted for the holding of the Court, and in case the same is not done the Judge may hold the Court at such other place in the County as he may deem proper ; and if the same is held elsewhere than in the County Court House, the proprietor of the building in which it is held may recover from the municipality which should have made such provision the sum of $5 for each and every day during which the building is used for the purposes of the Court ;

Courts in county towns.

Every Court held in the county town shall be held in the County Court House, or in such other place in the county town as the Judge may deem proper.

Powers of Judge.

21. In all proceedings before the Judge under this Act, the Judge shall have, with reference to the matters herein contained, all the powers which belong to or might be exercised by him in the County Court.

Clerk to be subject to summary jurisdiction of Judge.

22. The clerk of every municipality shall be subject to the summary jurisdiction and control of the County Judge in respect to the performance of his duty under this Act, and in respect to every act required to be performed by the Clerk touching the voters' list, in the same manner as officers of the County Court are to the Court.

Clerk's remuneration.

23. Where it is provided by a by-law or contract under which the Clerk of a Municipality is appointed or employed that the sum to be paid him by way of salary as Clerk is intended expressly or impliedly to include payment for all duties which, as Clerk and under this Act are to be performed by him, either in the preparation, publication and distribution of the list of voters under this Act, or before, upon or after the lodging with him of any complaint or appeal under this Act, or for any other act or work of whatever

nature or kind required by this Act to be done by him ; then the Clerk shall not, in respect of such duties or work, be entitled to or be allowed by the County Judge, nor shall there be taxed to him ,any fee, payment, cost, or charge whatsoever ; but when it is not intended by the by-law or contract to provide for the performance of the above-mentioned duties and work, then the clerk shall be entitled in respect thereof to the following but to no other fee or compensation, that is to say :—

1. Two cents for the name of every person entered in the list of complaints and in respect to whom appeal was made.

2. Two cents for every name entered in any necessary copy of said list of complaints.

3. Eight cents for every necessary notice to any party complaining or complained against.

4. Three dollars for every day's attendance on the sittings of the Court for the revision of the Voters' List.

5. And to the actual and reasonable disbursements (if any) necessarily incurred by him in serving the notices of complaint or appeal, when served by himself.

Appointment of constable.

24.—(1) The Judge shall have power to appoint some proper person to attend at the sitting of the Court as a constable and bailiff ; and the duties and powers of such person thereat shall be as nearly as may be the same as those of the bailiff of a Division Court at a Sitting of a Division Court and in reference thereto.

Constable's fees.

(2) The person acting as constable shall be entitled to the following but no other fees or compensation ; that is to say :

(*a*) The sum of one dollar and fifty cents for every day's attendance.

(*b*) For the service of any process or notice, including the service, the receipt and the return thereof and all other services connected therewith when allowed by the Judge, a sum not exceeding ten cents per mile one way for each mile actually and necessarily travelled to effect such service.

Payment of fees.

25. The compensation fixed by the preceding two sections shall be paid to the clerk and constable respectively by the municipality the list for which is the subject of investigation ;

and the amount of the compensation as certified by the Judge shall be so paid by the Treasurer of the Municipality upon the production and deposit with him of the Judge's certificate.

Report by Judge as to frauds, etc.

26. If the Judge who holds a Court believes or has good reason to believe that any person has contravened sections 37 or 40 of this Act, or that frauds in respect to the assessment or the voters' lists have prevailed extensively in the municipality, it shall be his duty to report the same to the Provincial Secretary, with such particulars as to names and facts as he may think proper.

Amendments.

27. The Judge shall have power to amend any notice or other proceeding upon such terms as he may think proper.

Substitution of new appellant.

28. If an appellant or complainant entitled to appeal dies or abandons his appeal or complaint, or having been on the alphabetical list made and posted by the Clerk as aforesaid, is afterwards found not to be entitled to be an appellant, the Judge may, if he thinks proper, allow any other person who might have been an appellant or complainant to intervene and prosecute the appeal or complaint, upon such terms as the Judge may think just.

Costs occasioned by errors may be ordered to be paid by persons responsible therefor.

29.—(1) In case of errors being found in the voters' list on the revision thereof, whether the errors are in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, if it appears to the Judge that the assessor was blameable for any of the errors, the Judge shall order (Form 18) the assessor, either alone or jointly with any other person, to pay all costs occasioned by the same; and in case of errors for which the clerk was to blame, the Clerk, either alone or jointly with any other person, shall be charged with the costs;

In case of errors of the Court of Revision, the Municipality shall, either alone or jointly with any person, pay the costs, subject to any claim which the municipality may justly have against the guilty parties; or

The Judge may order the assessor, clerk or municipality in such case, to pay the costs, if a party fails to recover the same from any other party named and ordered to pay the same;

In all cases not herein provided for, the costs shall be in the discretion of the Judge.

Division Court costs only to be allowed.

(2) No costs shall be allowed an any proceeding under this Act, other or higher than would be allowed in the Division Court under the lowest scale of costs in actions therein.

Liability of appellant for costs.

(3) The only costs to which an appellant shall be liable shall be the witness fees, unless in a case of bad faith on his part, and if, in the opinion of the Judge, a complaint or appeal is merely frivolous and vexatious, and has not been made in good faith, nor with any reasonable or probable cause, the Judge may, in his discretion, order the appellant or complainant to pay costs not exceeding double the amount for which he would otherwise be liable.

Enforcing payment of costs.

30. The payment of costs ordered to be paid by the Judge may be enforced by an execution (Form 19) against goods and chattels, to be issued from any County Court upon filing therein the order of the Judge, and an affidavit showing the amount at which the costs were taxed and the non-payment thereof.

County Judge may state case for opinion of Court of Appeal.

31. In order to facilitate uniformity of decision without the delay or expense of appeals,

1. A County Judge may state a case on any general question arising or likely to arise, or expected to arise under this Act, and may transmit the same to the Lieutenant-Governor in Council, who thereupon shall immediately refer the case to the Court of Appeal or a Judge thereof for the opinion of the Court or Judge thereupon; or

Lieutenant-Governor may obtain opinion.

2. The Lieutenant-Governor in Council may refer a case on any such general question to said Court of Appeal or a Judge thereof, for a like opinion.

Duty of Court.

3. Immediately upon the receipt of such case it shall be the duty of the Court or Judge to appoint a time and place for hearing arguments (if any be offered) upon the points and matter involved in the case, of which time and place written notice shall be given by the Clerk of the Court posting up a copy of the notice in the office of each one of the Divisions of the High Court at Osgoode Hall, in Toronto, at least ten clear days before the time appointed as aforesaid.

Argument.

4. At the time and place fixed therefor as aforesaid, the Court or Judge shall hear argument upon the case by such of the counsel present (if any) as the Court or Judge may deem reasonable, and shall thereupon consider the case and certify to the Lieutenant-Governor in Council the opinion of

the Court or Judge thereon; and the opinion shall thereupon be forthwith published in the *Ontario Gazette*, and a copy thereof sent to the Judge of every County Court.

Discretionary opinion at instance of voter or person entitled to be voter.

5. The Court of Appeal or a Judge thereof, may also give an opinion on any question at the instance of any voter or voters, or person or persons entitled to be voters, if said Court or Judge sees fit; and the proceedings with respect thereto shall be, as nearly as may be, the same as upon a case referred as aforesaid, but, in addition, the Court or Judge may require a deposit of money to cover the costs of hearing the question argued by counsel, and may require the notice of the proceedings or any of them to be given to such person or persons as the Court or Judge may direct.

LIABILITY OF PERSONS ADDED ON ROLL FOR TAXES.

Liability of persons whose names are added to roll on revision.

32. If a person not assessed, or not sufficiently assessed, is found entitled to be a voter at municipal elections, the municipality shall be entitled to recover taxes from him, and to enforce payment thereof by the same means and in the same manner as if he had been assessed on the roll for the amount found by the Judge; and the Judge shall make an order (Form 20), setting forth the names of the persons so liable, and the sum for which each person should have been assessed, and the land or other property in respect of which the liability exists, and the order shall be transmitted to the clerk of the municipality, and shall have the same effect as if the said particulars had been inserted in the roll.

FAILURE OF CLERK TO PERFORM HIS DUTIES.

Lists not vitiated by failure of Clerk to perform duties.

33. The times appointed for the performance, by the Clerk of the Muuicipality, of the duties required of him by this Act, shall be directory onlv to the Clerk; and the non-performance by him of any of the said duties within the times appointed, shall not render null, void or inoperative any of the lists in this Act mentioned.

Application by Clerk of the Peace if Clerk of municipality fails to perform duties.

34.—(1) In case the clerk of any municipality fails to perform any of the duties aforesaid, the Clerk of the Peace shall forthwith apply (Form 21) summarily to the County Judge or the Junior or acting Judge of the County Court for the County within which such municipality is situate, to enforce the performance of the same.

Application by voter.

(2) The application may also be made by any person entitled to be named as a voter on the list in respect of which the application is made.

Proceedings by Judge.

(3) The Judge shall, on such application, require (Form 22) the Clerk of the Municipality, and any other person he sees fit, to appear before him and produce the assessment roll, and any documents relating thereto, or to the list in respect to which the application is made, and to submit to such examination on oath as may be required of him or them, and the Judge shall thereupon make such orders and give such directions as he may deem necessary or proper for the purposes aforesaid.

Liability of Clerk for costs.

(4) The Clerk of the Municipality shall be personally liable for and shall pay the costs of the proceedings, unless on some special grounds the Judge shall see fit to order otherwise, and in such special case the costs shall be in the discretion of the Judge.

Judge's order not to relieve Clerk from penalty.

(5) The proceedings and order of the Judge shall not in anywise exonerate or release the Clerk from liability to the penalty hereinafter imposed.

Penalty for neglect of duties by Clerk.

35. If a Clerk of a Municipality omits, neglects or refuses to complete the voters' lists, or to perform any of the duties hereinbefore required of him for his municipality, the Clerk, for each omission, neglect or refusal, shall incur a penalty of $200.

Penalty for wilfully falsifying lists.

36. If a Clerk of a Municipality, or Clerk of the Peace, or any other person, wilfully makes any alteration, omission or insertion, or in any way wilfully falsifies any certified list or copy, or permits the same to be done, every such person shall incur a penalty of $2,000.

COLOURABLE TRANSFER OF PROPERTY.

Colourable transfer of property in order to confer vote.

37. No person shall make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal arrangement, whereby a colourable interest in any land, house or tenement is conferred, in order to qualify a person to be a voter; and any person violating the provisions of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a penalty of $100; and a person who induces or attempts to induce another to commit an offence under this section, shall incur a like penalty.

PENALTIES AND FINES.

Recovery of penalties.

38. The penalties mentioned in the next preceding three sections may be recovered with costs of action by any person suing for the same in any Court of competent jurisdiction.

Trial of actions for penalties.

39. Actions for penalties incurred under this Act, shall be tried by a Judge without a jury.

Assessor to make inquiries before assessing persons claiming to be assessed.

40—(1) To prevent the creation of false votes, where a person claims to be assessed, or to be entered or named in any assessment roll, or claims that another person should be assessed, or entered or named in such assessment roll as entitled to be a voter, and the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, or to be entered or named in the roll as so entitled to be a voter, it shall be the duty of the assessor to make reasonable inquiries before assessing, entering, or naming any such person in the assessment roll.

Penalty for improper insertion of names on roll.

(2) Any person who wilfully and improperly inserts or procures or causes the insertion of the name of a person in the assessment roll, or assesses or procures or causes the assessment of a person at too high an amount with intent in either or any such case to give to a person not entitled thereto, either the right or an apparent right to be a voter; or who wilfully inserts, or procures or causes the insertion of a fictitious name in the assessment roll, or who wilfully and improperly omits, or procures or causes the omission of the name of a person from the assessment roll, or assesses, or procures or causes the assessment of a person at too low an amount, with intent in either case to deprive a person of his right to be a voter, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment in the common goal of the county or city, for a period not exceeding six months, or to both fine or imprisonment, in the discretion of the Court.

INSPECTION AND COPIES OF DOCUMENTS.

Right to inspect and copy assessment rolls, etc.

41. Any voter, and any person entitled to be a voter, and any agent of such voter or person, shall have liberty at all reasonable times and under reasonable restrictions, to inspect and take copies of or extracts from assessment rolls, notices,

complaints, applications, and other papers and proceedings necessary or of use for the carrying out of the provisions of *The Assessment Act*, *The Manhood Suffrage Act*, *The Municipal Act*, and this Act; and the Clerk of the Municipality is to afford for the said purposes all reasonable facilities which may be consistent with the safety of the documents, and the equal rights and interests of all persons concerned, and shall in regard to the matters aforesaid be subject to the directions and summary jurisdiction of the County Judge.

Clerks to furnish copies of voters' lists.

42—(1) The Clerk of the Peace and the Clerk of a Municipality having the custody of the list of voters of a municipality or part of a municipality or place, shall furnish a certified copy of the list, then last revised and corrected, or of any of the parts thereof, to any person who may require a copy or part, on being paid for the same by such person at the rate of four cents for every ten voters whose names are on the list or part; the said officers may furnish printed copies for each of which they shall be entitled to receive six cents instead of the fee aforesaid; and the officers shall verify alterations made therein by writing their initials in close proximity thereto. If the alterations or interlineations exceed one hundred, it shall be the duty of the said officers to furnish written copies.

Fees.

(2) For each copy of the voters' list or of any of the parts thereof furnished to the Returning Officer, according to Form 8 in Schedule A to *The Ontario Election Act*, or according to Schedule C to *The Municipal Act*, the Clerk of the Peace furnishing the same shall be entitled to receive the sum of six cents for every ten voters whose names are on such list or part as the case may be.

RULES.

Board of County Judges may make rules.

43. The Board of County Judges may, if requested so to do by the Lieutenant-Governor, frame Rules and Forms of procedure for the purpose of better carrying this Act into effect, and such Rules and forms shall, after being approved of by the Lieutenant-Governor in Council, have the same effect and force as if they formed part of this Act.

FORMS.

Use of forms.

44. In carrying into effect the provisions of this Act, the Forms set forth in the Schedule hereto may be used, and the same or Forms to the like effect shall be deemed sufficient for the purposes mentioned in the said Schedule.

SCHEDULE OF FORMS.

FORM 1.

(Sections 3, 4.)

FORM OF VOTERS' LIST.

Voters' List, 18 *Municipality of*

SCHEDULE OF POST OFFICES.

1. North Augusta.
2. Maitland.
3. Wright's Corners.
4. Prescott.

POLLING SUBDIVISION No. 1, COMPRISING, ETC.—*(Giving the limits.)*

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.

No. on Roll.	NAME.	Lot.	Con. or Street.	——	Post Office Address.
6	Anderson, Henry.	N W ¼ 6	3	M. F. and Owner.	1
14	Andrews, John..	W 14 acres 8	1	M. F. and Tenant.	4
1	Archer James...	2	6	M. F. and Income.	4
50	Brown, Simon...	W ½ 9	2	M. F. and F. S.	3
71	Burton, Samuel..	E ½ 17	4	*See Subdivision No.*	2
	Etc.	Etc.	Etc.	Etc.	Etc.

PART II.—Persons entitled to vote at Municipal Elections ONLY.

No. on Roll.	NAME.	Lot.	Con. or Street.	——	Post Office Address.
4	Archer, Henry ..	4	3	Owner.	2
82	Burke, Edmund..	W ½ 17	4	Farmer's Son.	3
	Etc.	Etc.	Etc.	Etc.	Etc.

PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll.	NAME.	Lot.	Con. or Street.	——	Post Office Address.
43	Acroyd, James ..	N ½ 3	4	M. F.	3
8	Amos, Joseph ...	3	7	M. F.	3
	Etc.	Etc.	Etc.	Etc.	Etc.

POLLING SUBDIVISION No. 2, COMPRISING, ETC.—*(Giving the limits.)*
ETC., ETC., ETC.

FORM 2.

(Section 7.)

CERTIFICATE TO BE ENDORSED ON VOTERS' LIST.

I, *A. B.*, Clerk of the Municipality of , in the County of , do hereby certify that parts one and three of the within (*or* above) list constitute a correct list for the year 18 of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote at Elections for Members of the Legislative Assembly; and that parts one and two constitute a correct list for said year of all persons appearing by the said Roll to be entitled to vote at Municipal Elections in said Municipality; and I hereby call upon all electors to examine the said list, and if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law.

Dated this day of

A. B.,
Clerk of

FORM 3.

(Section 9.)

CLERK'S NOTICE OF FIRST POSTING OF VOTERS' LIST.

Voters' List, 18 .—Municipality of the of County of

Notice is hereby given, that I have transmitted or delivered to the persons mentioned in sections 5 and 6 of *The Ontario Voters' Lists Act, 1889*, the copies required by said sections to be so transmitted or delivered of the list, made pursuant to said Act, of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote in the said Municipality at Elections for Members of the Legislative Assembly and at Municipal Elections; and that said list was first posted up at my office, at , on the day of , 18 , and remains there for inspection.

Electors are called upon to examine the said list, and, if any omissions or any other errors are found therein, to take immediate proceedings to have the said errors corrected according to law.

Dated, etc. *A. B.*,
Clerk of

FORM 4.

(Section 10, Sub-sec. 2.)

VOTER'S NOTICE OF COMPLAINT ON GROUND OF DISQUALIFICATION.

To the Clerk of the Municipality of the of

I, *Angus Bell*, a voter (*or* a person entitled to be a voter) in the said Municipality (*or* for the Electoral District *in which the Municipality is situated*), complain that the name of *John Jack* is wrongly entered in the Voter's List for the said Municipality, he being a person disqualified under the section of (*here name the Act or Acts*):

And take notice that I intend to apply to the Judge in respect thereof, in pursuance of the statute in that behalf.

Dated the day of 18 .

ANGUS BELL,
Residence—Township of *York*.

FORM 5.

(Section 10, Sub-sec. 3).

NOTICE AND APPLICATION BY VOTER WHO HAS ACQUIRED PROPERTY SINCE ASSESSMENT.

To the Clerk of the Municipality of the of .

I, *Luke Doran*, a person entitled to be a voter in the said Municipality, complain that the name of *Peter Short* is wrongly inserted in the Voters' List for the said Municipality, he having before the final revision and correction of the Assessment Roll transferred to me the property in respect to which his name is entered on the said List (*or* parted with the property in respect to which his name is entered on the Voters' List and that I am in possession of the same) : And take notice that I intend to apply to the Judge to have my name entered on the said List, instead of the said *Peter Short*, pursuant to the provisions of the statute in that behalf.

Dated the day of 18 .

LUKE DORAN.

FORM 6.

(Section 13, Sub-sec. 1.)

VOTER'S NOTICE OF COMPLAINT.

To the Clerk of the Municipality of the of .

I, *James Smith*, a voter (*or* person entitled to be a voter) for the Electoral District of , in which the said Municipality is situated, complain (*state the names of the persons in respect to whom complaint is made, and the ground of complaint touching each person respectively —or set forth in lists as follows, varying according to circumstances*), that the several persons whose names are set forth in the subjoined List No. 1 are entitled to be voters in the said Municipality, as shewn in said list, but are wrongfully omitted from the Voters' List :—That the several persons whose names are mentioned in the first column of the subjoined list No. 2 are wrongly stated in the said Voters' List, as shewn in said list No. 2 :—That the several persons whose names are set forth in the first column of the subjoined list No. 3 are wrongfully inserted in the said Voters' List, as shewn in said list No. 3 :—And that there are errors in the description of the property in respect to which the names respectively are entered on the Voters' List (*or stating other errors*), as shewn in the subjoined list No. 4 :—And take notice, that I intend to apply to the Judge in respect thereof, pursuant to the statute in that behalf.

Dated the day of 18

JAMES SMITH,
Residence—Township of *Beby*.

List of Complaints mentioned in the above Notice of Complaint.

LIST No. 1 (*shewing voters wrongfully omitted from the Voters' List.*)

Names of Persons.	Grounds on which they are entitled to be on the Voters' List.
James Tupper	Tenant to John Fraser, of N. ½ lot 1, 2nd Con.
Simon Beauclerk ..	Manhood Franchise voter.
Angus Blain	Assessed too low—property worth $

LIST No. 2 (*shewing voters wrongly named in Voters' List.*)

Names of Persons.	Polling Sub-division.	Part of List.	The Errors in Statement upon Voters' List.
Joshua Townsend .	2	1	Should be *Joseph* Townsend.
John McBean	4	1	Should be John McBean *the younger*
S. Connell	3	2	Should be *Simon* O'Connell.
			etc. etc.

LIST No. 3 (*shewing persons wrongfully inserted in the Voters' List.*)

Names of Persons.	Polling Sub-division.	Part of List.	Statement why wrongfully inserted in Voters' List.
Peter White	4	1	Died before final revision of roll.
John May	3	2	Not entitled to Manhood Franchise.
David Walters	2	2	Assessed too high—property worth under $ etc., etc.

LIST No. 4 (*shewing voters whose property or qualification is erroneously described in Voters' List, etc.*)

Names of Persons.	Polling Sub-division.	Part of List.	Errors in respect to Property or otherwise stated.
Stephen Washburn.	3	2	Name should be in Sub-division No. 2.
Thomas Gordon ...	2	1	Property should be W½ lot 7, in 3rd Con.
Ronald Blue	4	2	Should be described as owner, not tenant.

FORM 7.

(*Section 13.*)

CLERK'S REPORT IN CASE OF APPEALS AND COMPLAINTS TO THE JUDGE.

To His Honour the Judge of the County Court of the County of

The Clerk of the Municipality of states and reports that the several persons mentioned in column 1 of the Schedule below, and no others, have each given to him (*or* left for him at his residence *or* place of abode, *as the fact may be*) written notice complaining of errors or omissions in the Voters' List for the said Municipality for 18 , on the grounds mentioned in column 2 of the said Schedule, and that such notices were received respectively at dates set down in column 3 of the said Schedule.

Dated, etc.

A. B.,
Clerk of

Schedule.

1. Name of Complainants.	2. Errors or Omissions Complained of.	3. Date when notice of Complaint received by Clerk.

FORM 8.

(*Section 13.*)

JUDGE'S ORDER APPOINTING COURT FOR HEARING COMPLAINTS AND APPEALS.

To , Clerk of the Municipality of the

Upon reading your report and notification respecting the Voters' List for the said Municipality for 18 , pursuant to the statute in that behalf, I appoint the of 18 , at the hour of at in the said county, for holding a Court to hear and determine the several complaints of errors and omissions in the said Voters' List, of which due notice has been given.

You are constituted Clerk of the Court.

You will advertise the holding of such Court, and post up in your office, or the place in which the Council hold their sittings, a list of all complaints of errors and omissions in the said Voters' List; and you will notify all parties concerned according to law.

Let the Assessor for the Municipality attend the sittings of the said Court, and let the original Assessment Roll of the Municipality for 18 , and the minutes of the Court of Revision for the Municipality for 18 , be produced before me or the Acting Judge, on the day and at the place above mentioned.

Dated day of 18 .

Judge, C.C.

FORM 9.

(*Section 13.*)

NOTICE TO BE POSTED BY CLERK IN HIS OFFICE WITH LIST OF COMPLAINTS.

Notice is hereby given, that a Court will be held, pursuant to *The Ontario Voters' Lists Act, 1889*, at , on the day of , 18 , at o'clock, for the purpose of hearing all complaints made against the Voters' List for the Municipality of for 18 , particulars of which complaints are shown in the subjoined schedule.

All persons having business at the Court are hereby required to attend at the said time and place.

Dated, &c. *A. B.*,

Clerk of

Schedule.

Name of party Complaining.	Name of person in respect to whom appeal was made.	Grounds of Complaint alleged.

FORM 10.

(*Section 13, Sub-sec. 3.*)

CLERK'S ADVERTISEMENT OF COURT IN NEWSPAPER.

Notice is hereby given, that a Court will be held, pursuant to *The Ontario Voters' Lists Act, 1889*, by His Honour the Judge of the County Court of the County of , at , on the day of 18 , at o'clock, to hear and determine the several

complaints of errors and omissions in the Voters' List of the Municipality of for 18 .

All persons having business at the Court are required to attend at the said time and place.

Dated, &c.

A. B.,
Clerk of

FORM 11.

(*Section 13.*)

CLERK'S NOTICE TO PARTY COMPLAINING.

The Ontario Voters' Lists Act, 1889.

You are hereby notified that, pursuant to the Statute in that behalf, a Court for the Revision of the Voters' List, 18 , for the Municipality of , will be held by the Judge (*or* acting Judge) of the County Court of the County of , at , on the day of , 18 , at o'clock, at which Court all complaints duly lodged of any error or omission in the said List will be heard and determined. A list of said complaints is posted up in and you are hereby required to be and appear at such Court; and take notice, that the Judge may proceed to hear and determine the complaints, whether the parties complaining appear or not.

By order of His Honour the Judge of the County Court of the County of

Dated day of 18 .

To

A person complaining of error in the said Voters' List.

A. B.,
Clerk of the Municipality of , and constituted Clerk of said Court.

FORM 12.

(*Section 13.*)

CLERK'S NOTICE TO PARTY COMPLAINED AGAINST.

The Ontario Voters' Lists Act, 1889.

You are hereby notified that, pursuant to the Statute in that behalf a Court for the Revision of the Voters' List, 18 , for the Municipality of , will be held by the Judge (*or* acting Judge) of the County Court of the County of , at , on the day of , 18 , at o'clock, and you are required to appear at the said Court, for that has complained that your name is wrongly inserted in

the said Voters' List (because, etc., *state matter of complaint concisely*). A list of all complaints lodged is posted up in ; and take notice that the Judge may proceed to hear and determine the said complaint, whether you appear or not.

By order of his Honour the Judge of the County Court of the County of

To

Entered on said Voters' List.

A. B.,
Clerk of the said Municipality, and constituted Clerk of the said Court.

FORM 13.

(*Section 14, Sub-sec. 1.*)

SUBPŒNA.

SEAL.

ONTARIO: County of To WIT. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Greeting:

We command you, that, all excuses be laid aside, you be and appear in your proper person before our Judge of our County Court of the County of , at , on the day of , 18 , at o'clock in the noon, at a Court appointed, and there and then to be held, for hearing complaints of errors in the Voters' List for 18 , of the Municipality of the of , in the County of , and for revision of the said Voters' List , then and there to testify to all and singular those things which you know in a certain matter (*or* matters) of complaint made and now depending before the said Judge, under *The Ontario Voters' Lists Act, 1889*, wherein one is complainant, and which complaint is to be tried at the said Court. Herein fail not.

Witness, His Honour , Judge of our said Court at the day of , in the year of our Lord 18 .

A. B.,
Clerk.

FORM 14.

(*Section 16.*)

REPORT OF CLERK APPLYING FOR CERTIFICATE UNDER SECTION 16.

To the Judge of the County Court of the County of ,

I, , Clerk of the Municipality of , in the said County of , do hereby certify as follows:

That I did, on the day of , 18 , post up, and for a period of thirty days next thereafter keep posted up, in a conspicuous place in my office at , a true and correct printed copy of the Voters' List for the said Municipality of for 18 , made in pursuance of *The Ontario Voters' Lists Act, 1889*, with the certificate required by section 7 of the said Act endorsed thereon.

That I did also duly deliver and transmit by post, by registered letter (*or*, by parcel post registered), the required number of similar printed copies of the said Voters' List, with my certificate endorsed, to each and all of the persons entitled to the same under sections 5 and 6 of said Act.

That I did on the day of , 18 , cause to be inserted in the newspaper called the " ," published in , the notice required by section 9 of the said Act.

That no person gave me nor did I receive any written notice of complaint and intention to apply to the Judge or Junior or acting Judge of the County Court of said County of in respect to the said Voters' List within thirty days after I, the said Clerk, had posted up the said List in my office, as directed by the provisions of the said Act.

And that to the best of my knowledge and belief, I have complied with the several requirements of the said Act, so as to entitle me to apply for certified copies under section 16 of the said Act, and I do hereby, in pursuance thereof, now apply to you the said Judge to certify three of the copies of the said List received by you as being the Revised List of Voters for the municipality of the said of for the year of our Lord 18 .

Witness my hand this day of 18 .

_____,

Clerk of the Municipality of

_____ P. O.

FORM 15.

(*Section 16.*)

CERTIFICATE OF NO COMPLAINTS.

County of

A. B., Clerk of the Municipality of the , having certified under his hand that no complaint respecting the List of Voters for said municipality, for the year 18 , had been received by him within thirty days after the first posting up of the same; and upon application of the Clerk, I, , Judge of the County Court of the County of in pursuance of the provisions of *The Ontario Voters' Lists Act 1889*, certify that the annexed printed List of Voters, being one of the copies received by me from the said Clerk, under section 5 of the said Act, is the Revised List of Voters for the said Municipality for the year 18 .

Given under my hand and seal, at , this day of , 18 .

Judge.

FORM 16.

(Section 17, Sub-sec. 1.)

STATEMENT OF ALTERATIONS BY JUDGE.

Be it remembered that upon a final revision and correction of the List of Voters of the Municipality of the of for the year 18 , pursuant to the provisions of *The Ontario Voters' Lists Act, 1889*, the following changes were duly made by me in the copies of the said list received by me from the Clerk of the said Municipality, viz. :

1. The following persons are added to the said List :

Name.	Polling Sub-Division.	Part of List.	Property, or other Qualification.

2. The following persons are struck off the said List :

Name.	Polling. Sub-Division.	Part of List.	Property, or other Qualification.

3. The following changes are made in the property described opposite to the names of voters otherwise correctly inserted :

Name.	Polling Sub-Division.	Part of List.	Property or other Qualification as originally described on list.	Property, or other Qualification as altered.

4. The following changes are made in the names of voters incorrectly named :

Name originally on list.	Polling Sub-Division.	Part of List.	Name as altered.	Property, or other Qualification.

Witness my hand this day of A.D. 18 .

County Judge, County of

FORM 17.

(Section 17, Sub-sec. 1.)

CERTIFICATE OF JUDGE.

I, Judge of the County Court of the County of pursuant to section 17 of *The Ontario Voters' Lists Act, 1889*, do hereby certify that the above (*as the case may be*) is a corrected copy of the List of Voters, for the year 18 , received by me from the Clerk of the municipality of the of , according to my revision and correction thereof, pursuant to the provisions of the said Act.

Dated at , this day of , 18 .

Judge.

FORM 18.

(Section 29, Sub-sec. 1.)

ORDER FOR PAYMENT OF COSTS.

The Ontario Voters' Lists Act, 1889.

In the matter of the Voters' List for the Municipality of 18 , and of the complaint and appeal to the Judge of the County Court of the County of , by *A. B.*, complaining of the name of *C. D.* being wrongly inserted in the said List (*or, as the case may be, stating in brief the nature of the complaint.*)

On proceedings taken before me, pursuant to the said Act, I find and adjudge that the name of the said *C. D.* was rightly inserted in the said List (*or*, was wrongly inserted in the said List), and order that the said *A. B.* do pay the said *C. D.* his costs occasioned by the said complaint,—*or*, and order that the said *C. D.* shall pay the said *A. B.* his costs incident to the said complaint,—*or*, and order that *E. F.*, the Assessor of the said Municipality, being blameable for such wrong insertion, do pay the said *A. B.* his costs incident to the said complaint,—*or*, *as the case may be, stating it in brief*), said costs to be taxed pursuant to the said Act.

Dated at , this day of 18 .

Judge.

FORM 19.

(Section 30.)

WRIT OF EXECUTION.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the GREETING:

We command you that of the goods and chattels in your bailiwick

of *C. D.*, you cause to be made $, for certain costs which lately by an order of His Honour , Judge of the County Court of , dated the day of , 18 , were ordered to be paid by the said *C. D.*, to *A. B.*, as and for his costs sustained by him on the trial of a complaint against the Voters' List for the Municipality of , in the said County, for 18 , made and prosecuted under the provisions of *The Ontario Voters' Lists Act, 1889*, which said costs have been taxed and allowed at the said sum, as appears of record; and have that money before Our Judge of Our said Court at immediately after the execution hereof; and in what manner you shall have executed this Our writ, make appear to Our Judge aforesaid at immediately after the execution thereof, and have you there then this writ.

Witnes, His Honour , Judge of Our said Court, at , the day of , in the year of our Lord 18 .

A. B.,
Clerk.

FORM 20.

(*Section 32.*)

ORDER FOR ASSESSMENT OF PERSONS OMITTED FROM ROLL, ETC.

In the matter of assessment for the year 18 , in the Municipality of The persons mentioned in the first column of the Schedules following not being assessed, or not being sufficiently assessed, on the Assessment Roll of the Municipality of , for the year 18 , and having been found entitled to vote, on proceedings taken before me, , Judge of the County of , under *The Ontario Voters' Lists Act, 1889*. In pursuance of Section 32 of the said Act, it is adjudged that the said parties mentioned in the first columns of the following Schedules respectively should have been assessed for the sums mentioned in the second columns respectively opposite their respective names, in respect to the land or other property or qualification mentioned in the third columns of said Schedules respectively opposite the respective names of said parties, and it is ordered that the said parties should be assessed accordingly.

Dated the day of A.D. 18 .

Judge.

Schedule 1.

Column 1.	Column 2.	Column 3.
Names of persons liable to have been assessed on the Assessment Roll for the Municipality of for the year 18 , but not assessed.	Amount for which the parties should have been assessed.	Property in respect to which the liability to assessment exists.

Schedule 2.

Column 1.	Column 2.	Column 3.
Names of persons not sufficiently assessed on the Assessment Roll for Municipality of for the year 18 .	Amount for which the parties should be assessed in addition to the amount already on the Assessment Roll.	Property in respect to which the liability to assessment exists.

FORM 21.

(Section 34, Sub-sec. 1.)

APPLICATION TO JUDGE AGAINST DELINQUENT CLERK.

Pursuant to section 34 of *The Ontario Voters' Lists Act, 1889*, I, *A. B.*, Clerk of the Peace for the County of (*or*, a person entitled to be named as an elector on the Voters' Lists for the Municipality of , for 18 ,) hereby inform His Honour the Judge of the County Court of the said County, that *C. D.*, Clerk of the Municipality of , in the said County, has failed to perform the duties required of him as such Clerk by the said Act, in this, that he the said *C.D.* has not made out the Alphabetical List of Voters for 18 for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (*or* has not delivered or transmitted printed copies of the Voters' List for the said Municipality, for 18 , to and and or to any of them *or*, *as the case may be, stating in brief the duty not performed*), according to the requirements of the said Act; and I apply to you the said Judge to enforce the performance of the duties aforesaid, and to take such other proceedings as may be necessary.

Dated at , this day of 18 .

A. B.,
Clerk of the Peace.

FORM 22.

(Section 34, Sub-sec. 3.)

SUMMONS.

The Ontario Voters' Lists Act, 1889.

In the matter of the Voters' List for the Municipality of , in the County of , for 18 .

Whereas it appears by the application of *A. B.*, the Clerk of the Peace for the said County (*or*, a person entitled to be named as an elector on the said List), made to me, in pursuance of the said Act, that you, *C. D.*, the Clerk of the said Municipality, have failed to perform certain duties required of you by the said Act, in this, that you have not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (*or, as the case may be, following the application*) ; and whereas the said *A. B.* has applied to me to enforce the performance of the duties aforesaid ;

You, the said *C.D.*, are therefore hereby required to be and appear before me, at my Chambers, in , on the day of , 18 , at the hour of , and then and there have with you and produce before me the Assessment Roll for 18 , for the said Municipality, and any documents in your custody, power or control, relating to the Assessment Roll, or to the Voters' List aforesaid ; and then and there submit yourself for the examination on oath as may be required of you. Herein fail not at your peril.

Dated this day of 18 .

To *C. D.*,

Clerk of the Municipality of

Judge.

52 Vict. cap. 17.

An Act to make further provision respecting the Districts of Parry Sound and Muskoka.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Sales of land for taxes. Rev. Stat. c. 193.

1. From and after the passing of this Act, the powers and duties imposed by *The Assessment Act* upon the treasurer of any county in respect of the collection of arrears of taxes, or in respect of the sale of land for taxes, shall, in the districts of Muskoka and Parry Sound, be performed and exercised by the sheriffs of each of the said districts respectively, and

all provisions respecting the sale of lands for taxes in counties shall, so far as practicable and where not inconsistent with this Act, apply to sales under this Act; and all duties and proceedings required to be performed by the officers of local municipalities, in regard to the collection of such arrears upon lists received from county treasurers, shall, by the said officers, be performed in respect to similar lists received from the sheriffs of the said districts.

Returns of arrears to be made by treasurers of Simcoe and Ontario to sheriffs of Muskoka and Parry Sound.

2. The treasurers of the counties of Simcoe and Ontario shall return to the sheriffs of Muskoka and Parry Sound respectively a list of all the lands in arrears for taxes not advertised for sale which are situate in their respective districts, and the sheriffs shall enter in their books against the respective lots or parcels of land the arrears so returned, and shall thereafter take all necessary subsequent proceedings for the collection of the same, in the same manner as is required for the collection of other arrears. But in case any of the lands in the said districts have been advertised by the treasurers of the aforesaid counties before the passing of this Act, the sale of such lands shall be completed in the same manner as if this Act had not been passed.

Rev. Stat. c. 193, s. 160, not to apply to Muskoka and Parry Sound.

3. Section 160 of *The Assessment Act* shall not apply to the districts of Muskoka and Parry Sound.

When lands to be sold for taxes.

4. Where any portion of the tax on the land in the districts of Muskoka and Parry Sound has been due for and in the third year, or for more than three years preceding the current year, the sheriff of the district shall, unless otherwise directed by a by-law of any municipal council in the district, make out a list in duplicate of all the land liable under the provisions of *The Assessment Act* to be sold for taxes in any municipality in the district, with the amount of arrears against each lot set opposite to the same; and transmit the same to the reeve of the municipality in which the land is situate, and such reeve shall authenticate the list by affixing thereto the seal of the corporation and his signature, and one of the lists shall be deposited with the clerk of the municipality, and the other shall be returned to the sheriff with a warrant thereto annexed under the hand of the reeve and the seal of the municipality commanding him to levy upon the land for the arrears due thereon, with his costs.

Rev. Stat. c. 193.

Place of sale.

5—(1) Where lands liable to sale for taxes are situate in the township of McMurrich, Ryerson, Strong, Laurier,

Nipissing, Perry, Armour, Joly, Gurd, Bethune, Proudfoot, Machar, Himsworth, or in the village of Sundridge, the sale of such lands for taxes shall take place at Burk's Falls.

(2) Where the lands are situate in the township of Spence, Ferrie, Pringle, Croft, Lount, Hardy, Chapman, Mills, or Patterson, the sale shall take place at Maganetawan village.

(3) Where the lands are situate in the township of Conger, Humphrey, Monteith, Carling, Shawanaga, Harrison, Wallbridge, Mowat, Cowper, McDougall, McKellar, Hagerman, McKenzie, Wilson, McConkey, Foley, Christie, Ferguson, Burpee, Burton, Brown, Blair, or other parts of the district of Parry Sound not named in this section, the sale shall take place at the town of Parry Sound.

(4) Where the lands are situate in the township of Medora, Wood, Morrison, Muskoka, Ryde, Baxter, Gibson, or Freeman, the sale shall take place at the town of Gravenhurst.

(5) Where the lands are situate in the township of Chaffey, Brunell, Stisted, Stephenson, or Sinclair, or in the village of Huntsville, the sale shall take place at the said village of Huntsville.

(6) Where the lands are situate in the township of Cardwell, Watt, Monck, McLean, Ridout, Macaulay, Draper, Oakley, or other parts of Muskoka not named in this section, the sale shall take place at the village of Bracebridge.

Change of place of sale.

(7) On an application of the council of any township the place of sale may be directed by the Lieutenant-Governor in Council to be transferred thereafter from any one of the places herein named to any other of them.

Advertisements of sale.

(8) The advertisements for the sale shall be published in the Ontario Gazette and in some newspaper published at the place of sale or elsewhere in the district and for the periods required by law.

Rev. Stat. c. 185, s. 33. not to apply.

(9) Section 33 of *The Act respecting the establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay, and Rainy River,* shall not hereafter be deemed to apply to the municipalities named in this section.

[*Sections 6 to 9 and the first part of 10 are omitted as the same do not relate to municipal matters.*]

10. Section 12 of *The Assessment Amendment Act 1888* [is] hereby repealed.

52 Vict. cap. 28.

An Act to facilitate the purchase of Toll Roads by Municipalities.

Assented to March 23rd, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Toll Roads Municipal Expropriation Act.*"

Interpretation.

2. Where the words following occur in this Act they shall be construed in the manner hereinafter mentioned unless a contrary intention appears :—

"Owner" or "Owners."

1. "Owner" or "owners" besides including any person or persons, in whom the legal and equitable estates are vested, shall also include any joint stock company as well as any municipality.

"Road" or "Roads."

2. "Road" or "roads" shall include any parcel of land or franchise respecting or any easement in any land, and also any toll houses or other buildings erected thereon or used therewith.

"Town."

3. "Town" shall mean a town separated from the county for municipal purposes.

Board of commissioners.

3. The council of any county, city, or separated town may by by-law appoint three persons, who are not municipal councillors or road owners, who shall constitute a board of commissioners for the purposes hereinafter mentioned, and may likewise from time to time fill any vacancy that may occur in such board.

Tenure of office.

4. The said commissioners shall respectively hold office during the pleasure of the council.

Selection of roads.

5. The board of commissioners shall examine the toll roads held or owned by any person, company or minor municipality within the county, city or town for which they are appointed (and such road or roads shall always be held to terminate at the boundary of any such city, town, or county,) and for that purpose shall have power to travel over, measure, dig into and otherwise examine, such roads as they may deem necessary for the use of the city, town, or county.

Examination of books and records.

6. The said board of commissioners shall also have power to examine all books and records connected with the management of any such road or roads and may require any owner or owners to produce the same for the purpose of being examined, and shall also have power to examine any person or persons under oath relative to the value, cost, income, or expenditure, or net profit of any such road or roads, and in case any person shall refuse to testify or refuse to produce such books or records, he or they shall be punished for contempt of court in the manner provided for such cases in the courts of law.

Maps to be laid before council.

7. The commissioners shall cause to be made a map or maps of the road or roads or such as they may think necessary; and the same shall be certified by a majority of the said commissioners and laid before the county, city, or town council for their consideration.

Maps to be registered if selection approved.

8. In case the council of any such city, town, or county approves of the road or roads, copies of the map or maps shall be filed in the office of the county or city registrar for such county or city.

Value to be ascertained.

9. The commissioners shall thereupon proceed as valuators to place a value upon the road or raads aforesaid, with a view to the same being purchased under the authority of this Act for the objects and purposes aforesaid.

Mode of ascertaining value.

10. For the purpose of ascertaining and determining the prices to be paid for the said road or roads the commissioners may agree with the respective owners as to the prices and terms of payment, subject to the provisions of this Act and to the approval of the council of the city, town or county; if the commissioners and owners are unable to agree the prices to be paid shall be determined by the Provincial Arbitrators in the manner provided for by *The Act respecting the Public*

Rev. Stat. c. 33

Works of Ontario and all the provisions of the said Act in regard to the mode of determining the compensation to be paid for lands or other property or rights to be acquired by the Commissioner of Public Works shall apply as nearly as may be in determining the compensation to be paid for roads or rights to be acquired for the purposes of this Act, but in lieu of making any tender the commissioners may name a price which they are willing to fix as the price to be paid, and notice thereof to the owners shall stand in lieu of a tender. The compensation agreed to or awarded as aforesaid shall be the price to be paid for the roads or rights described in the agreement or award, in case the same are taken under this Act, or by the authority of the council of such county, city or town within one year after such valuation or award has been made or after such price has been agreed upon.

Matters to be considered by commissioners or arbitrators in determining value of roads belonging to minor municipalities.

11. Where a minor municipality is the owner in whole or in part of a toll road wholly or partly within its own limits which is to be acquired or made a free road under the provisions of this Act, the commissioners in arranging with such municipality and determining the amount to be paid thereto in respect of such road or portion thereof situate within its own limits, or the arbitrators as the case may be, may have regard to any particular or special benefit or advantage to such municipality or the inhabitants thereof by reason of such road or that portion thereof lying within the limits of such municipality being made or becoming a free road.

Report of commissioners.

12. After the proceedings hereinbefore provided for determining the value of the road or roads have been completed, the said commissioners shall report to the council of such county, city or town, their proceedings therein with a statement of the road or roads proposed to be taken and the value thereof as determined by arbitration or agreement.

Payment of compensation into Court.

13. If the person or company conveying roads selected under this Act, could not without this Act have conveyed the same or agreed for the compensation to be paid therefor, or if any owner or party to whom the compensation money, or any part thereof is payable, refuses to execute the proper conveyance or other requisite instrument of transfer of the roads, or if the person entitled to claim the compensation, cannot be found, or is unknown, or if there is reason to fear

any claim or incumbrance the compensation money agreed upon or awarded, may be paid into the High Court of Justice, and a copy of the conveyance or of the agreement or award, if there be no conveyance, verified by affidavit, shall be delivered to the accountant or other proper officer of the Court.

Compensation to stand in place of the land.

14. The compensation money for any roads acquired or taken under this Act without the consent of the proprietor or proprietors, shall stand in the stead of such roads, and any claim to or incumbrance upon such roads shall be converted into a claim to the compensation money or to a proportionate amount thereof, and shall be unavailing as respects the roads themselves.

When possession may be taken.

15. Possession shall not be taken of any part of any road within the limits of any city, town, or county valued as aforesaid until the amount agreed on or awarded, for the same shall have been paid to the company or owner or owners, or to the persons appearing to be entitled to receive it, or paid into Court under the provisions of this Act.

Notice to incumbrancers

16. Where a road is selected and taken under this Act and is subject to a mortgage or other incumbrance secured, or not, it shall not be necessary to notify the mortgagee or other incumbrancers of any proceedings taken to determine the value of the road—unless the commissioners intend to urge a price to be named which would be insufficient to pay off the incumbrance.

Costs where road not taken.

17. If the road is not taken and paid for within one year as aforesaid, the owner or owners shall be entitled to receive the costs to which he or they have been put in any proceedings taken for determining by arbitration the value of his or their road ; the amount of such costs shall be stated in the award of the arbitrators, whether the arbitrators direct that the party or parties shall be entitled to such costs in the event of the road being purchased, or direct otherwise.

Costs to be in discretion of arbitrators.

18. Subject to the provisions of the preceding section the arbitrators shall have full authority to determine by and to whom any costs incurred in connection with any arbitration shall be paid; but any costs which should be paid by an owner or owners to the commissioners shall be directed by the award to be paid to the treasurer of such county, town,

or city; the award as to costs shall not take effect until the road is purchased, and if any such costs are directed to be paid to the said treasurer by any owner or owners, the same shall be deducted from the price of the road.

Certain sections of Rev. Stat. c. 33, incorporated.

19. For greater certainty it is hereby declared that the following sections of *The Act respecting the Public Works of Ontario*, shall as nearly as may be, and unless where inconsistent with this Act, apply to proceedings to acquire the said roads under this Act—that is to say, sections 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 40, 42, 43, 44 (*a*); and the powers

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(*a*) The following are the sections referred to as adapted to this Act:

25. The Board of Commissioners [*or* the corporation of the —— of ——] may authorize any engineer, agent, servant or workman employed by or under him to enter into and upon any land, to whomsoever belonging, and to survey and take levels of the same.

26. The Board or corporation may employ any engineer or person duly licensed or empowered to act as a surveyor for any Province in Canada, to make any survey or establish any boundary and furnish the plans and description of any property acquired or to be acquired by the Board or the corporation, and such surveys, boundaries, plans and descriptions shall have the same effect as if the operations pertaining thereto or connected therewith had been performed by a land surveyor duly licensed and sworn in for the Province.

27. The boundaries of such property may be permanently established by means of proper stone or iron monuments planted by the engineer or surveyor so employed by the Board or the corporation, and shall be of the same effect to all intents and purposes as if such boundaries had been drawn and such monuments planted by a land surveyor duly licensed and sworn in for the Province, and shall be held to be the true and unalterable boundaries of such property: but the boundary lines shall be so established and the monuments of iron or stone be planted only after due notice thereof has been given in writing to the owners of the lands to be thereby affected, and a written description of such boundaries shall be approved and signed in the presence of two witnesses, by such engineer or surveyor on behalf of the Board or the corporation, and by the other parties concerned, or, in case of the refusal of any party to approve or sign the same, the refusal shall be recorded in such written description: and the boundary marks or monuments shall be planted in the presence of at least one witness, who shall sign the said written description, which shall afterwards be deposited with the clerk of the county council. *See sec. 20 of this Act.*

28. The Board or the corporation, and their agents may enter upon any uncleared or wild land, and take therefrom all timber, stones, gravel, sand, clay, or other materials which they may find necessary for the construction, maintenance, and repair of the roads,

or rights which by the said sections or any of them are vested

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or property, real or personal, under their control; or may lay any materials upon any such land; and the Board or the corporation may construct, take and use all such temporary roads to and from such timber, stones, gravel, sand, clay, or other materials as may be required by them or their agents for the convenient passing to and from the works during their construction and repair; and may enter upon any land for the purpose of making proper drains to carry of the water from any road, or for keeping such drains in repair.

29. The Board or the corporation may acquire and take possession, of any land or real estate, streams, waters, water-courses, fences and walls, the appropriation of which is in their judgment necessary or expedient for the use, construction, or maintenance of any road; or for the purpose of draining, or for the enlargement or improvement of any road, or for obtaining better access thereto; and the Board or the corporation may, for such purpose, contract with all persons, guardians, tutors, curators and trustees, whatsoever, not only for themselves, their heirs, successors and assigns, but also for and on the behalf of those whom they represent, whether infants, absentees, lunatics, married women, or other persons otherwise incapable of contracting, possessed of or interested in such lands, real property, streams, waters and water courses; and all such contracts, and all conveyances or other instruments made in pursuance of any such contract shall be valid to all intents and purposes whatever.

30. In case the owner of lands or other property, the acquisition whereof is required as aforesaid, is under disability, and has no representative known to the Board or the corporation with whom a valid agreement can be made, the Board or the corporation may, without notice or tender of compensation, take possession of the said land, after such advertisement as is required where the owner does not reside on or near the property. [*See sec. 48 of the Public Works Act.*]

31—(1) In case the owner of the land or property to be taken is an infant, or other person under disability, and has no guardian or committee legally authorized to represent his interest in the said land, the High Court or a Judge thereof, or the Judge of the County Court of the county in which the land lies, shall, upon the application by petition of the Board or the corporation, appoint some person to represent the interest of the infant or other person under disability, and shall determine the compensation to be paid by the Board or the corporation to the person so appointed for his services.

(2) Marriage shall not constitute a disability requiring an appointment to be made under this Act.

32. No such appointment shall be required where the person under disability is only a part owner, and another person not under any disability, who is also a part owner, has agreed to sell, or has been served in this Province with a proposal to purchase, or a tender of purchase money, and in no such case shall it be necessary that the interest of the infant be represented in any dispute which may arise as to the value of the property taken.

in the Commissioner of Public Works or the Crown, are

33. The preceding section shall not apply where the infant or other person under disability holds an estate of a different nature from that of the person not under disability, but shall apply in all cases where they are part owners of the same estate although in different proportions.

34. The Judge of the County Court, or such person as the High Court may direct, shall have authority to execute a conveyance for and in the name of any infant or other person under disability, whether the case requires or does not require the appointment of some person to represent the interest of the infant or other person under disability, and such execution shall be expressed to be under the authority of this Act.

35. When any resistance or forcible opposition is offered or apprehended to possession being taken of any land, or to the exercise of any right authorized under this Act, the Judge of the County or District Court of the County or District in which the land to be taken, or in respect of which the right is to be exercised, lies, may issue his warrant to the Sheriff of the District or County, or to a bailiff, as he may deem most suitable, to put the Board or the corporation, their servants or agents, in possession, and to put down such resistance or opposition, which the Sheriff or bailiff, taking with him sufficient assistance, shall accordingly do.

36. The Board or the corporation may, if they think fit, in any case where any person is entitled to an arbitration under this Act, take such steps as may be necessary in order to have the amount of compensation determined by the Board of Official Arbitrators.

40. A notice, in such form and for such time as the Court may appoint, shall be inserted by the officer of the Court in some newspaper, published in the District or County in which the lands are situate, if there be any, which notice shall state that the title of the Board or the corporation (that is, the conveyance, agreement or award, or if there be none such, then the notice of the Board or the corporation to the said officer of the Court as hereinbefore provided), is under this Act, and the notice so to be inserted shall call upon all persons entitled to the lands or to any part thereof, or representing or being the husbands of any parties so entitled, or claiming to hold or represent incumbrances thereon or interests therein, to file their claims to the compensation or any part thereof.

42. The costs of the proceedings or any part thereof shall be paid by the Board or the corporation or by any other party as the Court may order, and if the order of distribution is obtained in less than six months from the payment of the compensation into Court the Court shall direct a proportionate part of the interest to be returned to the Board or the corporation; and if from any error, fault or neglect of the Board or the corporation, it is not obtained until after the six months have expired, the Court shall order the Board or the corporation to pay into Court the interest for such further period as may be right.

43. In any case where the price or compensation money agreed for or awarded does not exceed $100, it may be paid to the party

hereby vested in the said board of commissioners until the said roads are either purchased by such county, city, or town, or until the expiration of one year as aforesaid, after the valuation has been made of, or price agreed upon for the said roads; and in the event of the same being purchased by the county, city, or town council thereafter, the same powers or rights are hereby vested in the said county, city, or town council from time to time subject to the provisions of this Act; and in applying the provisions of the said Act while the commissioners are acting, "the Board of Commissioners" shall be substituted for the "Crown" or the "Commissioner" where either of the said words is used in the said Act; and in case of a purchase by the council of such county, city, or town where the council of such county, city, or town are acting, the purchasers by their corporate or proper names shall be substituted for the said expressions.

When award to become final.

20. The award of the arbitrators shall become final and absolute at the expiration of thirty days from the filing thereof with the clerk of the county council of said county, and notice to the warden and to the clerk of the municipality interested by registered letter or personal delivery unless appealed from, but the Court or a Judge may, under special circumstances, allow an appeal after fourteen days.

Appeal from award.

21. The appeal from the award referred to in the next preceding section shall be to the High Court of Justice, and may be heard before and decided by a Judge sitting in Court, and the practice to be observed upon any such appeal shall be the practice now observed in appeals from the Master, and the Judge may, upon the appeal, either amend the said award in any way and to any extent that he may deem proper, or refer the same back to the board of arbitrators for amend-

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who, under this Act, can lawfully convey the lands or property, or agree for the compensation to be made in the case, with the same effect as if it had been paid into Court under this Act; saving always the rights of any other party to such compensation money as against the party receiving the same.

44. If a party entitled to compensation as aforesaid is dissatisfied with the amount so paid by the Board or the corporation into Court as aforesaid, the question of the amount of compensation may be referred to the Board of Arbitrators, and proceedings thereon shall be had according to this Act, and the Board or the corporation may pay the amount of any award thereon into Court as the case may be, and the Court shall make such order as to the same as if it had been paid in as compensation, as hereinbefore mentioned.

ment, in whole or in part, with such directions as to law or fact as he may deem proper, or he may confirm the same.

Power to borrow money for purchase of road.

22.—(1) After the commissioners shall have reported their proceedings, as provided under section 11 of this Act, the county, city, or town council may, in the manner provided for in *The Municipal Act*, pass a by-law for borrowing the amount required to purchase the said roads, in accordance with the said report, by the issue of debentures of the municipality, payable in not more than twenty years, and bearing interest at a rate not exceeding six per cent. per annum, and provide for the payment in each year during the term of such by-law of an amount sufficient to meet the annual payments of principal and interest as the same may fall due.

(2) If the county council deem it expedient they may provide by such by-law for raising any amount required to pay and may pay to any municipality or municipalities which are not materially or only slightly benefited by the purchase of the road or roads, such a sum, by way of bonus, as may be deemed a fair or partial equivalent for the amount which such municipality will be required to pay towards the said purchase or any part thereof.

(3) Such by-law shall be submitted to the ratepayers of the city, town or county affected by the same.

Alternative by-law may be adopted.

23. In the alternative, where the roads to be purchased or taken are situate in but one or in a small number of the municipalities of the county, or where some of the municipalities are not, in the opinion of the county council, interested in the roads, or in the abolition of the tolls, the commissioners, if required by resolution or by-law of the county council, may, in addition to all other matters hereinbefore mentioned, report whether, in their opinion, the by-law of the county council should be a sectional by-law, and applied to such of the municipalities as, in the opinion of the commissioners, should pay for the roads. In such case the by-law of the council for raising or providing money for the purchase next hereinafter mentioned may, if the council think proper, name the municipalities which shall be liable to repay to the county the amount paid for the purchase of the roads or abolition of tolls as aforesaid, and may also fix the amount for which each such municipality shall be liable. In adopting a by-law under this section the council may have

regard to sub-section 2 of section 22 and may, if they think proper, apply its provisions thereto.

Power to borrow amount required for purchase of road.

24—(1) The county council may thereafter, under the provisions of *The Municipal Act*, pass a by-law for borrowing the amount required in accordance with the said report, by the issue of debentures of the county, payable in not more than twenty years, and bearing interest at a rate not exceeding six per cent. per annum, and providing for the payment each year during the term of such by-law, by the municipalities interested and in the proportions named in the by-law, an amount sufficient to meet the annual payments of principal and interest as the same may fall due.

(2) Such by-law shall be submitted for the vote of the ratepayers of the said interested municipality.

Statement to be furnished to municipality by county clerk.

25. The county clerk shall, on or before the 31st day of December in each year, send to the clerk of each municipality interested, a written statement of the amount to be levied during the ensuing year by such municipality for the purpose of providing the amount necessary to meet the said annual payments of principal and interest, and the council of said municipality shall levy such amount accordingly.

Abandonment of roads.

26. When a road extends from one county into an adjoining county, and the owner of such road desires to abandon the same, but the municipality or municipalities in which the road is situated refuse to consent to such abandonment, then the terms of abandonment shall be determined by arbitration in the manner provided in section 10 of this Act.

Fees of commissioners.

27. The said commissioners shall respectively be entitled to be paid by the corporation of such county, city, or town a reasonable amount for their services and expenses. The arbitrators shall be entitled to be paid in accordance with the scale and schedules of fees appended to *The Act respecting Arbitrations and References*, chapter 53 of the Revised Statutes of Ontario, 1887.

Tolls on roads belonging to cities and towns to be abolished on removal of tolls from roads purchased by counties.

28. On the completion of the purchase of the roads by any county, in all municipalities other than cities and towns, and upon the removal of tolls therefrom all tolls shall be removed from the roads owned by any city or town within such county within the limits of such city or town. Upon the removal of the tolls from any road under this Act, the

responsibility of thereafter maintaining and keeping the same in repair shall rest upon the local or minor municipalities through which the same pass, as in the case of ordinary highways.

Mode of determining tolls on part of road not taken.

29. Where the road lies partly within two municipalities, and that portion only which lies within one of the municipalities is purchased, leaving less than five miles in the adjoining municipality, the said arbitrators may fix a rate of toll that may be taken for such unsold portion, and in determining such rate of toll they shall have and exercise the powers granted to county councils under section 88 of *The General Road Companies' Act.*

Allowance by county council for maintenance of roads.

30. If the county council deem it expedient, they may provide by the by-law for the purchase of the roads or by any other by-law that the county shall annually, during a term of years to be named in the said by-law, contribute such sum as they may determine for the purpose of assisting in keeping up and maintaining any road or roads.

52 Vict. cap. 36.

The Municipal Amendment Act, 1889.

Assented to March 23, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Commencement of Act.

1. This Act shall come into force on the first day of August, 1889, except as to section 4, which shall come into force on the 15th day of January, 1890, and section 41 hereof which shall come into force on the passing hereof.

Rev. Stat. c. 184, s. 16 sub-s. 1, amended.

2. Sub-section 1 of section 16 of *The Municipal Act* is amended by adding the following thereto:—

(a) The term "electors" in the preceding sub-section shall be held to include all freeholders and leaseholders whose lease extends over a term of not less than five years from the date when the said vote is taken, and whose names are entered on the last revised assessment roll of the said municipality.

Rev. Stat. c 184, s. 24, sub-s. 7 (51 V. c. 28, s.2), amended.

3. Sub-section 7 of section 24 of the said Act is amended by striking out the words "as hereinbefore provided," in the last line thereof, and substituting the words "on a day to be named in the said proclamation or in any subsequent proclamation."

Rev. Stat. c. 184, s. 77, sub-s. 1, amended.

4. Sub-section 1 of section 77 of the said Act is amended by adding after the words "clerk of the peace" in the seventh line of the said sub-section the words "no high school trustee."

Rev. Stat. c. 184, s. 89. amended.

5. Section 89 of the said Act is amended by striking out the words "the end of three months from" in the 10th and 11th lines, and the words "and until such day the change shall not go into effect" in the 12th and 13th lines of the said section.

Rev. Stat. c. 184, s. 163, sub-s. 8, amended.

6. Clause 2, of sub-section 8, of section 163 of the said Act is amended by adding the following words thereto: "but no word or mark written or made, or omitted to be written or made by the deputy returning officer on a ballot paper shall avoid the same."

Rev. Stat. c. 184, s. 227, amended.

7. Section 227 of the said Act is amended by adding thereto the following words: "and in the event of no one municipality having the greatest equalized assessment, in consequence of two or more municipalities being equalized equally, then the reeve, or, in his absence, the deputy-reeve, of the municipality having the greatest number of municipal voters entered on its last revised voters' list shall have such second or casting vote."

Rev. Stat. c. 184, s. 227, amended.

8. The said section 227 of the said Act is further amended by adding thereto the following as sub-section 2 thereof:—

(2) In counting the names of voters referred to in this section the name of the same person shall not be counted more than once, whether the name of such person appears upon the voters' lists only once or more than once.

9. Section 255 of the said Act is amended by adding after the word "cities," in the first line thereof, the words "and towns." Rev. Stat. c. 184, s. 255, amended.

10. Section 259 of the said Act is repealed, and the following is substituted therefor:— Rev. Stat. c. 184, s. 259, repealed.

259—(1) The council of the corporation of the city of Toronto shall appoint two auditors, who shall hold office during pleasure. Appointment of auditors for Toronto.

(2) The treasurer shall prepare in duplicate, not later than the first day of April in each year, an abstract of the receipts and expenditure of the city for the year ending on the 31st of December preceding, and of the assets and liabilities thereof at that date, and shall submit the same to the auditors for examination. The auditors shall audit this abstract with the treasurer's books, and shall make a report on all accounts audited by them, and a special report as to any expenditure made contrary to law; and on or before the first day of May shall transmit one copy of the said abstract with their report thereon to the secretary of the Bureau of Industries, Toronto, and file the other in the office of the clerk of the council; and thereafter any individual or ratepayer of the municipality may inspect the same, at all reasonable hours, and may, by himself or his agent, at his own expense take a copy thereof or extracts therefrom. Report of auditors.

11. Sub-section 2 of section 263 of the said Act is amended by inserting after the word "abstract," in the seventh line of the said sub-section, the words "and detailed statement in such form as they have been submitted to the council." Rev. Stat. c. 184, s. 263, sub-s. 2, amended.

12. Sub-section 2 of section 340 of the said Act is amended by inserting after the words "gas or water works," where they occur in the said sub-section, the words "or railways." Rev. Stat. c. 184, s. 340, sub-s. 2, amended.

13 Sub-section 1 of section 342 of the said Act is amended by inserting after the words "gas or water works," where they occur in the said sub-section, the words "or railways." Rev. Stat c. 184, s. 342, sub-s. 1 amended.

14. Section 390 of the said Act is amended by inserting after the word "situate," in the eleventh line thereof, the word "may." Rev. Stat. c. 184, s. 390, amended.

Rev. Stat. c. 184, s. 392, repealed.

15. Section 392 of the said Act is repealed and the following substituted therefor:

Provision if owner of property refuses to name an arbitrator.

392. In any such arbitration, if after service upon the owner or occupier of or any person interested in the property of a copy of the by-law (certified to be a true copy under the hand of the clerk of the council), together with a notice in writing of the appointment of an arbitrator on behalf of the corporation, such owner, occupier or person interested does not within twenty-one days appoint an arbitrator on his behalf and give notice thereof to the said council, the corporation may (except in the case provided for in section 393) apply to the Judge of the County Court of the county in which the municipality lies to appoint as arbitrator on behalf of such owner, occupier or person interested in the property as provided in section 394.

Rev. Stat. c. 184, s. 436, amended.

16. Section 436 of the said Act is amended by adding thereto the following sub-section:—

Livery stables.

(4) The board of commissioners of police and the council of any city in which there is no board of commissioners of police may pass by-laws defining areas or districts and localities in the city within the limits of which no livery stable, boarding or other stables shall hereafter be established in which horses are to be kept for hire or express purposes.

Rev. Stat. c. 184, s. 460, amended.

17. Section 460 of the said Act, as amended by *The Municipal Amendment Act, 1888*, is further amended by adding thereto, the following sub-section:—

Maintenance of patients sent by local municipalities to House of Refuge.

(6) The council may provide by by-law that each local municipality within the county shall be required to pay for the maintenance and support of each person sent by or from such local municipality to the House of Refuge, and received therein, a sum not exceeding at the rate of one dollar and fifty cents per week.

Rev. Stat. c. 184, s 469, amended.

18. Section 469 of *The Municipal Act*, is amended by adding thereto, the following sub-section:—

Purchase of lands and erection of buildings for municipal and judicial purposes.

(2) It shall be lawful for the council of any county and the council of any city or town situate in such county, but separated therefrom for municipal purposes, to enter into any agreement,

(*a*) For the purchase or acquisition of land within the county town for the purpose of erecting thereon buildings

for the use of such county and city or town, for municipal and judicial purposes;

(*b*) And for the erection, maintenance, use, management, and control of such buildings;

(*c*) And for fixing or ascertaining the amount which each municipality shall pay or contribute for the purposes aforesaid;

(*d*) And for the subsequent disposition of such land and buildings, and of any insurance or other moneys that may be received in respect thereof;

And to acquire such land as may be necessary for the erection thereon of such buildings;

And to pass all such by-laws as may from time to time be necessary for the purchasing of such land, and the carrying out of any such agreement.

Rev. Stat. c. 184, s. 479, sub-s. 9, amended.

Aid to rifle associations and militia.

19. Sub-section 9, of section 479 of the said Act is amended by adding after the word "municipality" in the sixth line thereof, the following words: "or for the purpose of aiding any regularly organized rifle association; or for adding to the sum paid, during the period of annual or other authorized drill, or when on active service, to any enlisted member or members of any corps of Active Militia organized within such municipality; or for the purpose of military outfit or equipment of the members of such corps; or for aiding in the establishment or maintenance of a band of music."

Rev. Stat. c. 184, s. 480, sub-s. 1, amended.

Contracts for the supply of gas or electric light.

20. Sub-section 1 of section 480 of the said Act is amended by striking out of the second line thereof the words "with any water-works or water company," and by adding at the end thereof the following:—"Every municipal council shall in like manner have power to contract for a supply of gas or electric light for street lighting and other public uses for any number of years not in the first instance exceeding ten, and for renewing such contract from time to time for such period not exceeding ten years, as the council may desire."

Rev. Stat. c. 184, s. 487, sub-s. 1, amended.

Matters that may be referred to a sole arbitrator.

21. Section 487 of the said Act is amended by adding to sub-section 1 thereof the following words:—

"Provided that in cities having a population of 100,000 or over, the limitation of the above provision to claims not exceeding $1,000 shall not apply, and

all claims of the character aforesaid may, at the option of any party interested therein, be settled and determined by the award of a sole arbitrator to be appointed by any Judge of the Court of Appeal for Ontario, upon the application of any party interested, and upon notice, as herein provided, to the other parties.

Appointment of valuators in the place of a sole arbitrator.

Provided that in such cities in lieu of appointing a sole arbitrator, the Judge may, in cases where the sole question involved is the value of the property taken, or to be taken, appoint one or more valuators or appraisers, who shall determine the amount of compensation to be made to the claimant or claimants upon view of the locality, and according to their own skill and knowledge without hearing evidence."

Rev. Stat. c. 184, s. 487, sub-s. 2, amended.

(2) Sub-section 2 of the said section is amended by adding after the words, "sole arbitrator" in the last line thereof "or valuator or appraiser."

Rev. Stat. c. 184, s. 487, amended.

22. Section 487 of the said Act is further amended so far as relates to cities having a population of 100,000 or over, by adding the following sub-sections thereto :—

Fees of valuators or appraisers.

(4) The fees to be paid to the valuator or appraiser, or valuators or appraisers shall be determined by the Master in Chambers of the Supreme Court of Judicature for Ontario upon the application of any party interested.

Costs of awards.

(5) Subject to the provisions of section 488, the costs of any award made under this section, by an arbitrator or by the valuator or valuators, or appraiser or appraisers appointed as herein provided shall be upon such scale and shall be borne and paid by such of the parties as the said Master in Chambers may direct by order (to be made on the application of either party).

Appointment of arbitrators, etc., not to be deemed an admission of the corporation's liability.

(6) The appointment of arbitrators, valuators, or appraisers under this section, or under sections 391, 392, 393 and 394 of this Act, shall not be deemed to be an admission of any liability on the part of the corporation; and all defences and objections shall be open to either party as if an action had been brought.

(7) Any arbitrator appointed under this section, or under the sections hereinbefore mentioned, may and shall at the request of either party, in and by his said award, specify separately, (1) the amount of compensation or damages to which the claimant would be entitled, if there was no set off on account of any advantage derived by the claimant from the work or improvement in question, and (2) the amount deducted from such compensation or damage on account of such advantage, and also whether any, and if any, how much of the said advantage was direct, special and peculiar to the property of the claimant. Contents of award

23. Section 489 of the said Act is amended by adding to sub section 1 the following article :— Rev. Stat. c. 184, s. 489, sub s. 1, amended.

(*c*) An election shall not be irregular or void or voidable, for the reason that a polling sub-division is not or has not been divided which contains more than 200 voters so long as it does not contain more than 300 voters. Election not to be violated if sub-division is wrongly divided.

24. Section 496 of the said Act is amended by adding thereto, as part of sub-section 10, the following : "For regulating the erection or occupation of dwellings on narrow streets, lanes or alleys, or in crowded or unsanitary districts." Rev. Stat. c. 184, s. 496, amended. Dwellings on narrow streets.

25. Section 496 of the said Act is further amended by adding thereto the following sub-sections :— Rev. Stat. c. 184, s. 496, amended.

(43) For appointing, employing and paying a night-watchman or watchmen, for the purpose of patrolling at night or between certain hours of the night, any street or streets or such portion or portions thereof within the municipality as may by such by-law be defined, and of guarding and protecting the property, real and personal, within the limits thereby defined. Appointment of night-watchman.

(*a*) For levying by special rate upon all the real property within the limits defined by the by-law, except vacant lots, all the expenses of or incidental to such employment of such night-watchman or watchmen in the same manner and at the same time as payment of the other rates or taxes within the municipality is enforced ; Special rate to be levied.

(*b*) No such by-law shall be passed except upon petition therefor by two-thirds of the freeholders and householders Petition by ratepayers.

who, upon the passing thereof, would become liable to be charged with the expenses to be incurred thereunder, and who represent as value at least, two-thirds of the assessed real property thereon liable to be charged with such expenses;

Proof of signatures.

(*c*) No such petition shall be received or acted on by the council unless, and until all the signatures thereon are proved by the affidavit of a reliable and competent witness to be the genuine signatures of the persons whose signatures they purport to be, and that the contents thereof were made known to each person signing the same before signature;

Liability of tenant.

(*d*) As between the landlord and tenant of premises comprised within the limits defined by said by-law, the tenant shall be liable for the expenses to be levied thereunder, for the period or time of his occupation, unless there is an express agreement to the contrrary.

51 V. c. 28, c. 24, amended.

26. Section 24 of *The Municipal Amendment Act, 1888*, is amended by striking out the words "having a population in excess of fifty thousand," which occur at the end of the third and the beginning of the fourth lines thereof, and by adding the words "or town" immediately after the word "city" in the third line thereof.

Rev. Stat. c. 184, s. 510, amended.

Livery stables.

27. Section 510 of *The Municipal Act* is amended by adding at the end thereof the words "and for defining localities or districts within the limits of which no livery or boarding stable shall hereafter be established."

Rev. Stat. c. 184, s. 535, amended.

28. Section 535 of the said Act is amended by adding the following thereto as sub-section 5 :—

(5) Notwithstanding anything contained in sections 532 and 535 and sub-sections thereof, the council of any county may, by by-law, provide that where the words "rivers, lakes, and ponds" are mentioned in those sections and sub-sections as applying to the erection and maintenance of bridges over such rivers, lakes, and ponds, where such rivers, lakes, and ponds cross any boundary line between two municipalities within such county, they or either of them shall not include or extend to any river, lake, or pond less than eighty feet in width.

(*a*) In the event of the council of any county passing such by-law, then in such case the councils of the

minor municipalities bordering upon such boundary line shall erect and maintain all bridges across streams of a less width than eighty feet over all such rivers, lakes and ponds crossing such boundary line.

29. Section 545 of the said Act is amended by inserting after the word council," in the first line thereof, the words, "except the council of a city or town." Rev. Stat. c. 184, s. 545, amended.

30. Section 550 of the said Act is amended by adding the following sub-section thereto :— Rev. Stat. c. 284, s. 550, amended.

(2*a*) For straightening, deepening, widening, or diverting any river, creek, or stream, for the purpose of preventing the flooding, undermining, or carrying away of any land, or for preventing injury to any highway, bridge, or other structure by the flow of the waters of any such river, creek, or stream, subject to all the provisions of this Act respecting compensation for lands taken or injured, but nothing herein shall authorize the interference with any mill site or water privilege on any such river, creek or stream. Straightening, etc., streams dangerous to bridges, etc.

31. Section 555 of the said Act is amended by adding thereto the following sub-section :— Rev. Stat. c. 184, s. 555, amended.

(3) Whenever a public street, square, or drive forms the boundary between any two or more municipalities, (although such street, square, or drive is wholly within the limits of one of such municipalities or partly in each), the councils of such municipalities may make and enter into any agreements and pass any by-laws proper and necessary to provide for the construction and maintenance of any one or more of the street improvements or works, and the performance of any one or more of the street services for which provision is made in this Act in sections 612 to 629, both inclusive, and every such council may pass by-laws for ascertaining, determining and raising so much of the cost of any such work, improvement or service as is to be borne by the municipality generally, and for determining the proportion thereof to be assessed and levied upon the real property benefited thereby, and for assessing and levying upon the real property so benefited and situate within its jurisdiction, and Improvements on streets between two municipalities.

for collecting the proportion or share of the cost of any such improvement, work or service done under any such agreement by the municipality, in the same manner and with the like remedies as if the improvement had been made or work had been done or service had been rendered upon or in a street within the municipality and as if the cost thereof was assessable upon real property, the whole of which was situate in the same municipality.

Rev. Stat. c. 184, s. 580, amended.

32. Section 580 of the said Act is amended by adding thereto the following: "and such council shall hold the Court of Revision provided for by sub-section 10 of section 569 of this Act."

Rev. Stat. c. 184, s. 582, amended.

33. Section 582 of the said Act is amended by adding thereto the following:—"But nothing in this Act shall be construed to give authority to such arbitrators to hold or act as or perform the work of a Court of Revision, as provided for by sub-section 10 of section 569."

Rev. Stat. c. 184, s. 583, amended.

34. Section 583 of the said Act is amended by inserting after the word "completed" in the first line the words "whether the work has been done under this Act or under any former or other Act respecting drainage works and local assessment therefor."

Rev. Stat c. 184, s. 583, sub-s. 2, amended. Applications to set aside notice to municipalities to make drainage repairs.

35. Section 583 of the said Act is further amended by adding to sub-section 2 thereof the following articles:—

(*a*) Provided, nevertheless, that any municipality, after receiving such notice, may within fourteen days thereafter apply to the Judge of the County Court of the county within which the municipality is situate to set aside the notice. Such application may be made upon four days' notice to the person or persons who gave the notice to the municipality, and the Judge shall, after hearing the parties and any witnesses that may be called or other evidence, adjudicate upon the questions in issue, confirm the notice or set it aside, as to him shall seem proper, or order that the said work shall be done wholly or in part, and the costs of and concerning the said motion shall be in the discretion of the Judge, except as hereinafter mentioned, and may be taxed upon the County or Division Court scale, as the Judge may direct.

(*b*) Should the Judge find that the notice to the council was given maliciously, or vexatiously, or without any just cause, or to remove an obstruction which, under section 588 of this Act, it was the duty of the person giving the notice to remove he shall, notwithstanding anything hereinbefore contained, order the costs to be paid by the person giving such notice. Costs in cases of vexatious notices.

(*c*) Any costs which the municipality may be called upon to pay, by reason of any proceedings in this amendment mentioned, shall be a charge upon the lands benefited, and may be levied and collected in the same way as the cost or expense of keeping the drain or ditch in repair are levied or collected. Costs to be a charge on the lands benefited.

(*d*) A mandamus against the municipality shall not be moved for until after the lapse of fourteen days from the date of service of the notice upon the municipality in any case, nor while the motion is pending before the County Court Judge, and thereafter only on an appeal in the next sub-section provided for. Motions for mandamus.

(*e*) Any party to such proceedings may appeal to a Divisional Court of the High Court of Justice, from the decision or judgment of the Judge, upon the application, and the proceedings in and about such appeal shall be the same as nearly as may be as upon an appeal from the decision or judgment of a Judge of the County Court under chapter 47 of the Revised Statutes of Ontario, 1887. Appeal.

Upon any such appeal the Court may determine whether a mandamus shall issue or otherwise, and may make such order as will do justice in the matter.

Nothing herein shall authorize an appeal upon the mere question of costs.

36. Sub-section 1 of section 586 of the said Act is amended by inserting after the word "work" in the fifth line, the words "whether the work has been done under this Act or under any former or other Act respecting drainage works and local assessment therefor." Rev. Stat. c. 184, s. 586, sub-s. 1, amended.

37. Section 590 of the said Act is amended by inserting after the word "lands" in the eighth line thereof, the words Rev. Stat. c. 184, s. 590, amended.

"and, in the case of a municipality, whether the lands injured are the property of the municipality or not."

Rev. Stat. c. 184, s. 613, amended.

38. Section 613 of the said Act is amended by adding thereto the following sub-section :

Construction of drains, &c., in connection with pavements laid down as local improvements.

(3) In case the council of such municipality is about to construct, renew, or alter the character of a pavement upon any street or portion thereof as a local improvement, the council may, before laying down such new pavement, put in all necessary private drain connections from any existing drain or sewer upon such street or portion thereof to the street line on each side of such drain or sewer, and may assess and levy the cost therein upon the particular property benefited thereby as part of the cost of said local improvement, pursuant to the provisions of section 612 of this Act.

Rev. Stat. c. 184, s. 617, amended.

39. Section 617 of the said Act is amended by adding thereto the following sub-section :

Assessment for boulevards, &c.

(2) "Real property adjoining and fronting upon any park, square, public drive or boulevard, shall be specially assessable for and in respect of improvements, works and services made, done or provided upon or in any such drive or boulevard in like manner as real property fronting or abutting upon any public street, but where a public park, square, drive, or boulevard exists or may hereafter be established, the lands adjoining if not exempt from taxation, shall be assessable only in respect of such improvements, works and services to the extent to which such lands are specially benefited by such improvements, works and services ; and where the lands on one side of such drive or boulevard are a public park or square, or for other reasons are exempt from taxation at least one-half of the cost of such improvements, works and services shall be borne by the municipality generally, and no petition against any such assessment shall avail to prevent the carrying out of any improvement, work or service in any such park, square, drive, or boulevard, and the making of such special assessment."

40. Sub-section 1 of section 630 of the said Act is amended by inserting after the word "works," in the last line thereof, the words "or for the purchase of fire engines and appliances." Rev. Stat. c. 184, s. 630, sub-s. 1, amended.

41. Sub-section 1 of section 634 of the said Act is amended by adding thereto the following words: "or to which the equivalent sections of *The Railway Act* of Canada do now or may hereafter apply." Rev. Stat. c. 184, s. 634, sub-s. 1, amended.

42. The council of every county, township, city, town, and incorporated village, may pass by-laws for subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by any bridge company incorporated for the purpose of erecting and maintaining any bridge within, or partly within, the municipality or between the municipality and another, and all the sub-sections of section 634 of *The Municipal Act*, shall apply in the same manner, and with the same effect, as if the words "or bridge company," were inserted in sub-section 4, in the first line after the words "railway company," and the words "or bridge" were inserted after the word "railway," in the second line of the said sub-section. Aiding bridge companies.

43. Section 40 of *The Municipal Amendment Act, 1888*, is repealed, and the following substituted therefor:— 51 Vic. c 28, s. 40, repealed.

40. When any portion of a township municipality is annexed to a city or town by proclamation, the portion so annexed shall for all school purposes be deemed to be part of such city or town, provided always that when the portion annexed does not include the whole of any contiguous school section, the respective municipalities shall, unless determined by mutual arrangement between themselves after such annexation, appoint an arbitrator who, with the senior County Judge of the county shall value and adjust in an equitable manner the rights and claims of all parties affected by such annexation, and who shall determine by what municipality, or portion thereof, the same shall be adjusted, paid or settled, and the award of such arbitrators shall be final and conclusive, and the money found due, either by mutual arrangement or under the award, shall be deemed money for school purposes, and may be applied for under the provisions of sub-section 3 of section 40, and sub-section 5 of section 113 of *The Public Schools Act*, and the provisions of section 129 of the same Act, shall apply to the money so required to be Provisions as to schools when territory added to a municipality. Rev. Stat. c. 225.

paid under the award or mutual agreement, and a debenture or debentures may issue to be repayable out of the taxable property of that part of the school section remaining in the indebted municipality, upon a requisition of the trustees of said school section, without calling a special meeting of the electors as required by sub-section 2 of section 129 of the said Act, and upon the terms and conditions set forth in a by-law of the said municipality, anything in *The Public Schools Act* to the contrary notwithstanding.

Payment to be made to county when gaol used as a lock-up.

44—(1) In case a county town has not a lock-up approved by the Inspector of Prisons, and the county gaol is used for the purposes of a lock-up, the municipal corporation of the county town shall pay yearly to the county treasurer for the use of the county a reasonable amount for the use of the gaol as a lock-up, and for the expenses incurred thereby and in connection therewith, and in the event of any dispute arising as to the amount which should be paid to the county as aforesaid, the same shall be settled by arbitration as provided for under *The Municipal Act.*

(2) This section shall not apply to cities or towns separated from counties for which provision is made by section 473 of *The Municipal Act.*

Selection of jurors for city of Toronto and county of York.

45. It shall not be necessary for the sheriff of York, the sheriff of Toronto, the Senior Judge of the county of York, the Junior Judge of said county, the warden of said county, and the mayor of the city of Toronto, to attend together upon the selection of jurors directed by this section ; but the sheriff of the county of York, the Senior Judge of said county and the warden of said county shall attend at such selection of jurors so far as it is made from the lists prepared by the selectors for the local municipalities in the county of York, other than the city of Toronto ; and the sheriff of Toronto, the Junior Judge of the said county, and the mayor of the city of Toronto shall attend at such selection of jurors so far as it is made from the list prepared by the selectors for the city of Toronto. And any selection of jurors so made shall be deemed in all respects valid and effectual and a sufficient compliance with the provisions of *The Jurors' Act.* Selectors whose attendance is hereby made unnecessary shall not be entitled to fees for such unnecessary attendance.

Jurisdiction of County Judges with

46.—(1) A Judge of the County Court shall have the same jurisdiction as a Judge of the High Court to try the

right of a municipality in the county of such County Court Judge to a reeve or deputy reeve or reeves, or the validity of the election or appointment of mayor, warden, reeve, deputy reeve, alderman, or councillor in the said county; and the practice with respect to such trial, and to the proceedings incident thereto, shall be the same, as nearly as may be, as in the High Court for the time being. respect to municipal elections.

(2) The judgment of a County Court Judge under this section shall be appealable to a Judge of the High Court, and the proceedings incident thereto shall be the same, as nearly as may be, as in the case of an appeal in other cases from the judgment of a Local Master or the Master in Chambers. The judgment of a Judge of the High Court on such an appeal shall be final.

(3) Any judgments which have heretofore been pronounced by a Judge of a County Court under the supposed authority of the 187th and subsequent sections of *The Municipal Act*, and have not been the subject of any proceeding in the High Court to set aside or question the same, are hereby confirmed.

47. This Act shall be read with and form part of *The Municipal Act.* Act to be read with Rev. Stat c. 184.

52 Vict. cap. 37.

An Act to amend the Acts respecting Municipal Institutions in the outlying Districts. (*a*)

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

(*a*) See also, "An Act to make further provision respecting the Districts of Parry Sound and Muskoka." 52 V. c. 17.

Rev. Stat. c. 185, s. 1, sub-s. 1, amended.

1. Sub-section 1 of section 1 of chapter 185 of the Revised Statutes of Ontario, 1887, is amended by adding after the word "Nipissing," in the second line thereof, the word "Manitoulin."

Rev. Stat. c. 185, s. 1, sub-s. 2, amended.

2. Sub-section 2 of section 1 of said chapter 185, is amended by striking out the words, "the district of Rainy River," in the first and second lines of the said sub-section, and substituting therefor the words, "any of the said districts."

Rev. Stat. c. 185, s. 40, amended.

3. Section 40 of said chapter 185, is amended by striking out the word "male," in the first line of sub-section 1 thereof, and by adding the following thereto as sub-section 4:—

(4) This section shall not apply to married women or entitle them to vote.

Rev. Stat. c. 185, s. 51, repealed.

4. Section 51 of said chapter 185, is repealed, and the following substituted therefor:—

Reeves to be Justices of the Peace.

51. The reeves of the various municipalities shall be, *ex officio*, Justices of the Peace of their respective municipalities, and shall have the like powers within their respective municipalities as are exercised by other Justices of the Peace in this Province.

Rev. Stat. c. 185, s. 56, amended.

5. Section 56 of said chapter 185, is amended by adding thereto the following sub-section:—

(4) At any time after the addition of any territory to any municipality, or after the union of two or more adjacent municipalities, any such territory annexed or any township forming part of such union municipality having a population of not less than one hundred persons, may, subject to the approval of the Lieutenant-Governor in Council, withdraw from such union in accordance with and subject to the provisions contained in sub-section 2 of section 1 of this Act.

Assessment appeals in Manitoulin.

6. Subject to the provisions of section 76 of *The Assessment Act*, appeals in respect to an assessment in Manitoulin shall be to the Stipendiary Magistrate of Manitoulin.

52 Vict. cap. 38.

An Act to amend the Free Libraries Act.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Rev. Stat. c. 189, s. 1, amended.

1. Section 1 of *The Free Libraries Act* is amended by adding to sub-section 2 thereof, the following words :—

"There may also be established evening classes for artisans, mechanics and workingmen, in such subjects as may promote a knowledge of the mechanical and manufacturing arts."

Powers, etc., of board of management with respect to evening classes.

2. All the powers vested in the board of management, and all the duties imposed upon the said board with respect to libraries, news-rooms and museums, shall be considered as applicable to the evening classes established under this Act, and in the event of the establishment of such classes the board shall have the same powers with respect to the appointment and dismissal of teachers or instructors as they now possess with respect to other salaried officers.

Application of Rev. Stat. c. 189, s. 10.

3. Section 10 of *The Free Libraries Act* shall apply to Art Schools.

Rev. Stat. c. 189, s. 10, amended.

4. Section 10 of the said Act is amended by adding thereto the following sub-section :—

(3) In case any Art School transfers its property, real and personal, to the board of management of a free library as herein provided, it shall be lawful for the Lieutenant-Governor in Council to give the like aid to such free library from the unappropriated moneys in the hands of the Treasurer of the Province, as such Art School would have received.

Penalty for disorderly behaviour.

5. Any person who wilfully interrupts or disquiets any free library established and conducted under the authority of the said Act, by rude or indecent behaviour, or by making a noise either within the library, or so near thereto as to dis-

turb the persons using the same, shall, for each offence, on conviction thereof before a Police Magistrate or Justice of the Peace, forfeit and pay for library purposes to the municipality within which the offence was committed, such sum not exceeding $20, together with the costs of conviction, as the said Police Magistrate or Justice may think fit.

52 Vict. cap. 39.

The Assessment Amendment Act, 1889. (*a*)

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Rev. Stat. c. 193, s 52, amended.

1. Section 52 of *The Assessment Act* is amended by adding the following sub-sections thereto :—

(2) When there has, from any cause, been delay in so completing the final revision of the said roll beyond the said 31st day of December, the council may notwithstanding adopt the assessment when finally revised, as the assessment on which the rate of taxation for the said following year shall be levied.

Assessment of localities added to cities and towns.

(3) Where an addition of any part of the localities adjacent to any city or town has been made to said city or town, in any year subsequent to the 30th day of September, under the provisions of section 22 of *The Municipal Act*, the council of said city or town may pass a by-law in the succeeding year, adopting the assessment of the said addition as last revised while a part of the adjoining municipality, as the basis of the assessment for said part for that year, although

(*a*) See also 52 V. c. 40, p. 1222.

As to sales of land for taxes in the districts of Muskoka and Parry Sound, see 52 V. c. 17, ss. 1-5.

the assessment of the remainder of the city or town has been made, and the rate of taxation has been levied in accordance with the preceding provisions of this section; and the levying of a proportionate share of the taxation upon said addition shall not invalidate either the assessment of the remainder or the tax levied thereon; and the qualification of municipal voters in said addition shall, for the said succeeding year, be the same as that required in the municipality from which the part has been taken.

(4) Sub-sections 2 and 3 of this section shall have force and effect from the first day of January, 1889.

2. Sub-section 2 of section 53 of *The Assessment Act*, added thereto by section 5 of *The Assessment Amendment Act, 1888*, is amended by inserting the words "or notice" after the word "demand" in the tenth line of the said sub-section. Rev. Stat. c. 193 (51 V. c. 29, s. 5), amended.

3. Section 53 of *The Assessment Act* is amended by adding thereto the following sub-section:— Rev. Stat. c. 193, s. 53, amended.

(3) The notice or demand mentioned in section 123 of this Act may be given or made by the collector at any time after the receipt of the collection roll, and may be acted upon at any time after the expiration of fourteen days from the giving of such notice or making such demand, or after the day appointed for payment by any by-law passed under this section, whichever shall last happen.

4. Sub-section 4 of section 79 of the said Act is amended by repealing all the words after the word "county" in the fifteenth line thereof. Rev. Stat. c. 193, s. 79 (4), amended.

5. Sub-section 5 of section 79 of the said Act is amended by adding after the word "expenses," in the third line thereof, the following words:—"And the County Judge, sheriff, or registrar, shall also receive a reasonable sum, not to exceed $10 each per day. Rev. Stat. c. 193, s. 79 (5), amended.

6. Section 79 of the said Act is further amended by adding the following sub-section thereto:— Rev. Stat. c. 193, s. 79, amended.

(9) In the event of the assessment of any one or more municipalities being reduced or increased by the County Judge or the Court, directions shall be given by the said Judge or Court to the clerk of the county council, to increase or reduce the rate imposed by the by-law of the county council, so that such rate will, calculated upon the finally Directions to clerk of county council after equalization of assessment roll.

revised and equalized assessment, produce the sum which such by-law is intended to provide.

Expenses of County Judges on assessment appeals.

7. County Court Judges shall be entitled to receive from the municipality as their expenses, for holding Courts in the various municipalities other than the county town, for the purpose of hearing appeals from the Court of Revision, under the provisions of *The Assessment Act*, the same sums as they are allowed for holding Courts for revising voters' lists.

Rev. Stat. c. 193, s. 124 (1), amended.

8. Sub-section 1 of section 124 of the said Act is amended by inserting in the first line thereof before the words "In case a person" the words "Subject to the provisions of section 53 of this Act."

Rev. Stat c. 193, s. 124 (2), amended.

9. Sub-section 2 of the said section 124 is amended by striking out the words "fourteen days mentioned in this section" in the fourth line and substituting the words "time for payment of the taxes;" by striking out the words "the fourteen days" in the seventh line and substituting the words "such time," and by striking out the words "fourteen days after demand or notice, as the case may be," in the twelfth and thirteenth lines and substituting the words "time for payment thereof."

This Act to be read with Rev. Stat. c. 193

10. This Act shall be read with and form part of *The Assessment Act.*

52 Vict. cap. 40.

The Franchise Assessment Act, 1889. (*a*)

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of The Legislative Assembly of the Province of Ontario, enacts as follows :—

(*a*) See also 52 V. c. 39, p. 1220.

1. This Act may be cited as "*The Franchise Assessment Act, 1889.*". Mode of citation.

2—(1) In this section the words and expressions "Farm," "Son," "Sons," "Farmer's Son," "Father," "Election," "To Vote," shall respectively have the meaning given thereto by section 79 of *The Municipal Act.* Interpretation. Rev. Stat. c. 184.

(2) Every farmer's son *bona fide* resident on the farm of his father or mother, at the time of the making of the assessment roll, shall be entitled to be, and may be, entered, rated and assessed on such roll, in respect of such farm, in manner following: Farmers' sons.

(*a*) If the father is living, and either the father or mother is the owner of the farm, the son or sons may be entered, rated, and assessed, in respect of the farm, jointly with the father, and as if such father and son or sons were actually and *bona fide* joint owners thereof.

(*b*) If the father is dead, and the mother is the owner of the farm, and a widow, the son or sons may be entered, rated, and assessed in respect of the farm, as if he or they was or were actually and *bona fide* an occupant or tenant, or joint occupants or tenants thereof, under the mother.

(*c*) Occasional or temporary absence from the farm for a time or times, not exceeding in the whole six months of the twelve months next prior to the return of the roll by the assessor, shall not operate to disentitle a son to be considered *bona fide* resident as aforesaid.

(*d*) If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote at a municipal election, to the father and all the sons, where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to be assessed under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give a qualification so to vote.

(e) If the amount at which the farm is so rated and assessed is not sufficient, if equally divided between the father, if living, and one son, to give to each a qualification so to vote, then the father shall be the only person entitled to be assessed in respect of such farm.

(f) A farmer's son entitled to be assessed under any of the preceding provisions, may require his name to be entered and rated on the assessment roll as a joint or separate owner, occupant, or tenant of the farm, as the case may be; and such farmer's son so entered and rated shall be liable in respect of such assessment as such owner, tenant, or occupant.

Entry of voters on roll.

51 V. c. 4.

51 V. c. 29.

3—(1) Every assessor shall, in conformity and compliance with the provisions in that behalf of *The Manhood Suffrage Act*, enter on his roll every person entitled to be entered thereon under the said Act, and, in addition to the entries required to be made in that behalf in the roll by *The Assessment Amendment Act, 1888*, shall, opposite the name of every such person, in the column 8 mentioned in section 14 of *The Assessment Act*, enter

(a) In the assessment roll of a city, town, or village, the residence of such person by the number thereof (if any) and the street or locality whereon or wherein the same is situate.

(b) In the assessment roll of a township, the concession wherein and the lot or part of a lot whereon such person resides;

and in all cases any additional description, as to locality or otherwise, which may be reasonably necessary to enable such residence to be ascertained and verified.

Students at college, etc.

51 V. c. 4.

(2) No person shall be entitled to be marked or entered by the assessor in the assessment roll as a qualified voter under *The Manhood Suffrage Act*, in respect of residence in a municipality where he is in attendance as a scholar or student at any school, university or other institution of learning, unless he has no other place of residence entitling him to vote under said Act.

Disqualifications.

51 V. c. 4.

(3) No person shall be entitled to be entered or marked by the assessor in the assessment roll as qualified to vote under *The Manhood Suffrage Act*, who at the time of marking

or entering is a prisoner in a gaol or prison undergoing punishment for a criminal offence; or is a patient in a lunatic asylum; or is maintained, in whole or in part, as an inmate receiving charitable support or care in a municipal poorhouse or house of industry, or as an inmate receiving charitable support or care in a charitable institution receiving aid from the Province under any statute in that behalf.

Persons making affidavit under 51 V. c. 4 to be entered on roll.

(4) The assessor shall place on the assessment roll, as qualified to be a voter under *The Manhood Suffrage Act*, the name of every male person who delivers or causes to be delivered to the assessor, an affidavit signed by such person in the form or to the effect set forth in Form "A" appended to the said Act, if the facts stated are such as entitle such person to be placed thereon, and the affidavit may be made before any assessor or Justice of the Peace, commissioner for taking affidavits, or notary public; and every such officer shall, upon request, administer an oath to any person wishing to make the affidavit.

Enquiries by assessor.

(5) The assessor shall also make reasonable enquiries in order to ascertain what persons resident in his municipality, or in the section of the municipality in respect of which the assessor is acting, are entitled to be placed on the assessment roll as qualified to be voters under *The Manhood Suffrage Act*, and shall place such persons on the roll as qualified to be voters without the affidavit referred to in the next preceding sub-section.

51 V. c. 4.

Affidavit by assessor.

(6) In addition to any other affidavit, oath, certificate, or statement required or directed by *The Assessment Act* or any Act in amendment thereof the assessor shall, at the foot of his assessment roll, after he has completed the same, make affidavit before a Justice of the Peace in the words, or to the effect following:—

Rev. Stat. c. 193.

"I have not entered any name in the above roll, or improperly placed any letter or letters in column 4 opposite any name, with intent to give to any person not entitled to vote, a right of voting.

"I have not intentionally omitted from the said roll the name of any person whom I believe entitled to be placed thereon, nor have I, in order to deprive any person of a right of voting, omitted from column 4 opposite the name of such person, any letter or letters which I ought to have placed there."

Complaints respecting list.

(7) Complaints of persons having been wrongfully entered on the assessment roll as qualified to be voters under *The*

51 V. c. 4.

Manhood Suffrage Act, or of persons not having been entered thereon as qualified to be voters under said Act who should have been so entered, may by any person entitled to be a voter under said Act, or to be entered on the voters' list in the municipality or in the electoral district in which the municipality is situate, be made to the Court of Revision as in the case of assessments.

Commencement of section.

(8) The provisions of this section shall, to all intents and for all purposes, be deemed and taken to have been in full force and effect on, from and after the first day of February, 1889.

Assessor not required to give notice to farmer's sons.

4—(1) Nothing in section 47 of *The Assessment Act* contained shall be deemed to require the assessor to give, leave or transmit any notice to any person entered on the assessment roll as a farmer's son, either under the provisions of said Act as amended by this Act or otherwise, but in any notice given or transmitted to any farmer under the provisions of said section the assessor shall enter and set forth the name of every person entered in said roll as a son of such farmer.

Service of notices on farmers' sons.

(2) Any notice, document, or paper necessary to be given to, or left with, or served upon a farmer's son under any of the provisions of *The Assessment Act*, shall be deemed to be so given to, or left with, or served upon such son if the same is given to him personally, or is left with some grown person at the residence of the farmer whose son he is.

Interpretation.

(3) In this section the expression "Farmer's Son" and the word "Farmer" shall have the same meaning as in section 2 of this Act.

Rev. Stat. c. 193, s. 46, repealed.

5. Section 46 of *The Assessment Act*, as amended by *The Assessment Amendment Act, 1888*, is hereby repealed.

Rev. Stat. c. 193, s. 51, repealed.

6. Section 51 of *The Assessment Act* is hereby repealed, and instead thereof the following shall be read as section 51 of the said Act:—

Assessor to make enquiry so as to prevent creation of false votes.

51—(1) To prevent the creation of false votes, where a person claims to be assessed, or to be entered or named in any assessment roll, or claims that another person should be assessed, or entered or named in such assessment roll, as entitled to be a voter, and the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, or to be entered or

named in the roll as so entitled to be a voter, it shall be the duty of the assessor to make reasonable enquiries before assessing, entering, or naming any such person in the assessment roll.

Persons entitled to be assessed to be entered on roll without request.

(2) Any person whomsoever entitled to be assessed or to have his name inserted or entered in the assessment roll of a municipality, shall be so assessed, or shall have his name so inserted or entered, without any request in that behalf; and a person entitled to have his name so inserted or entered in the assessment roll, or in the list of voters based thereon, or to be a voter in the municipality, shall, in order to have the name of any other person entered or inserted in the assessment roll, or list of voters, as the case may be, have for all purposes the same right to apply, complain or appeal to a Court or a Judge in that behalf as such other person would or can have personally, unless such other person actually dissents therefrom.

Penalty for causing improper entries on roll.

(3) Any person who wilfully and improperly inserts or procures or causes the insertion of the name of a person in the assessment roll, or assesses or procures or causes the assessment of a person at too high an amount, with intent in either or any such case to give to a person not entitled thereto either the right or an apparent right to be a voter; or who wilfully inserts, or procures or causes the insertion of any fictitious name in the assessment roll, or who wilfully or improperly omits or procures or causes the omission of the name of a person from the assessment roll, or assesses or procures or causes the assessment of a person at too low an amount, with intent in either case to deprive any person of his right to be a voter, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment in the common gaol of the county or city, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court.

"Voter," meaning of.

(4) The word "Voter" in this section shall have the meaning given thereto by *The Ontario Voters' Lists Act, 1889.*

Rev. Stat. c. 193, s. 50, amended.

7. Section 50 of *The Assessment Act* is hereby amended by omitting therefrom the words and figures "on or before the 1st day of May," and inserting instead thereof the words "on or before the thirtieth day of April."

Interpretation "List of Voters."

8—(1) In this Act, and in *The Assessment Act* as amended by this Act, the expression "List of Voters" shall mean the alphabetical list referred to in section 3 of *The Ontario Voters' Lists Act, 1889.*

"Assessment roll;" "roll"

(2) In this Act, the expression "assessment roll," and the word "roll" shall mean an assessment roll within the meaning of *The Assessment Act.*

Rev. Stat. c. 193 and 51 V. c. 29 to be read with this Act.

9. This Act and *The Assessment Act* and *The Assessment Amendment Act, 1888*, as amended by this Act, shall be read and construed as one Act.

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52 Vict. cap. 41.

An Act to amend the Liquor License Act.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Rev. Stat. c. 194, s. 8, sub-s. 3, amended.

1. Sub-section 3 of section 8 of *The Liquor License Act* is amended by adding thereto the following :—"But this proviso shall not apply to petitions or applications made in counties or cities in which the second part of *The Canada Temperance Act* having been in force has been repealed, such repeal taking effect after the said first day of May in any year."

Rev. Stat c. 194, s. 36, amended.

2. Section 36 of the said Act is amended by inserting the following after the words "at one time" in the fourth line thereof, "to be wholly removed and not drunk upon the premises."

Rev. Stat. c. 194, s. 45 (2), amended.

3. Sub-section 2 of section 45 of the said Act is amended by adding the following :—"But all sums imposed by the municipality in excess of the sum of $200 mentioned in section 42 of this Act shall be divided equally between the Province and such municipality."

4. Section 58 of the said Act is amended by adding the following as sub-section 2*b* :— Rev. Stat. c. 194, s. 58, amended.

2*b*. The purchaser of any intoxicating liquor from a person who is not licensed to sell the same, or any person who drinks upon the premises liquor so purchased, at the time of the purchase thereof, shall be guilty of an offence under this Act.

5. Sub-section 3 of the said section 58 is also amended by inserting the words "or 2*b*" after the words "sub-section 1" in the third line thereof. Rev. Stat. c. 194, s. 58 (3), amended.

6. Section 74 of the said Act is amended by inserting the following after the word "house," in the fourth line thereof: "or between any licensed shop and any store, shop, place, or premises where groceries or other merchandise are sold." Rev. Stat. c. 194, s. 74, amended.

7. Section 85 of the said Act is amended by inserting the following after the word "costs" in the fifth line: "And in default of payment thereof he shall be imprisoned in the county gaol of the county in which the offence was committed for a period not exceeding one month, and to be kept at hard labour in the discretion of the convicting Magistrate." Rev. Stat. c. 194, s. 85, amended.

8—(1) In license districts where the second part of *The Canada Temperance Act* is in force it shall be lawful for the council of any city, town, village or township at any time after a petition to the Governor in Council, as required by the said Act and amendments thereto, praying for the revocation of the Order in Council passed for bringing the second part of the said Act into force, has been deposited with the sheriff or registrar of deeds of the county or city to pass by-laws under sections 20, 32 and 42 of *The Liquor License Act*; and all by-laws so passed shall take effect upon, from and after the repeal of the said second part of *The Canada Temperance Act* in any such municipality, and shall remain in force as provided by the said sections; and no by-law already passed in any municipality under said sections 20, 32 and 42 of the said *Liquor License Act* or any of them subsequent to the deposit of the said petition with the said sheriff or registrar during the year 1889, shall be invalid by reason only of the same having been passed while the second part of *The Canada Temperance Act* was in force or after the dates mentioned in any of the said sections respectively. Power to pass by-laws under Rev. Stat. c. 194, ss. 20, 32 and 42 pending repeal of C. T. Act.

(2) Nothing in this section contained shall be construed as in any way extending the powers of the said municipalities

to pass by-laws under any of the said sections 20, 32 and 42 after the dates limited in the said sections respectively in any year subsequent to the year of the repeal of the said second part of *The Canada Temperance Act* in any of such municipalities.

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52 Vict. cap. 42

An Act to amend the Public Health Act.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Stipendiary Magistrates appointed under Rev. Stat. c. 91, to be health officers.

1. Every Stipendiary Magistrate already appointed, or who may hereafter be appointed under the provisions of *The Unorganized Territory Act*, shall be ex officio a medical health officer in and for the district for which he has been, or shall be appointed, and shall possess all the powers of such an officer under the provisions of *The Public Health Act*.

Appointment of sanitary inspectors.

Rev. Stat. c. 205.

2. The Provincial Board of Health may also, subject to the approval of the Lieutenant-Governor-in-Council, appoint in any of the unorganized districts one or more sanitary inspectors under *The Public Health Act*, who shall possess the powers conferred upon sanitary inspectors under *The Public Health Act*, and also all the powers conferred upon local boards of health by section 14 of the said Act.

Constables appointed for provisional judicial and other districts to have powers of sanitary inspectors.

3. All constables appointed for any provisional judicial, temporary judicial or territorial district under *The Act respecting Constables*, chapter 82 of the Revised Statutes of Ontario, 1887, shall be *ex-officio* sanitary inspectors with the same powers as sanitary inspectors appointed under this Act.

52 Vict. cap. 46.

An Act to authorize the appointment of Fire Guardians, and for the better prevention of bush fires.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Appointment of fire guardians.

1—(1) The council of a township municipality may, on the petition of one-third of the ratepayers of the municipality, at its first meeting in any year hereafter, or at a special meeting to be called for the purpose, within two months after the passing of this Act, appoint by by-law not less than two resident freeholders for each polling sub-division within the municipality to carry out the provisions of this Act.

(2) The persons so appointed shall be called and known as "fire guardians," and shall hold office until the first meeting of a new council elected after their appointment, and until their successors are appointed.

Leave to be obtained before setting out fires.

2. No person shall, after the passing of a by-law appointing fire guardians under this Act, in any township, set out or set fire to any brush heap or other combustible material in any field, clearance, or place in such township where the same would be likely to spread, between the first day of July and the first day of October in any year, without having first obtained leave in writing from one of the fire guardians.

Leave not to be relied on in actions for negligence.

3. The obtaining of such leave or permission in writing of the proper fire guardian shall not be pleaded or given in evidence in any action for negligently setting out fire, or in extenuation of, or in mitigation of damages; but the absence of such leave or permission shall, in such an action, be deemed *prima facie* evidence of negligence.

Inspection by fire guardian before granting leave.

4. It shall be the duty of a fire guardian appointed as aforesaid, on being requested to grant leave and permission to set out fire, to examine the place at which it is intended

to set out the fire and the adjoining lands, and the timber trees and other property thereon, and to refuse such request, and decline to grant leave and permission if, in his opinion, it would not be safe by reason of the danger of fire spreading therefrom or otherwise.

Matters to be provided for in the by-law.

5. The council of any township municipality may, in and by the by-law, make provisions for the payment to the fire guardian for his services, and fix the penalty to be imposed upon fire guardians and others refusing to perform or neglecting their duties under this Act or the by-law, or contravening any provision thereof.

Penalty.

6. Any person setting out fire as aforesaid without leave and permission as aforesaid, shall be subject to a penalty not exceeding $100 for each offence, which penalty may be imposed and recovered on information of any resident ratepayer in the municipality before a Police Magistrate or two Justices of the Peace sitting together, and in default of payment of the fine or penalty and costs, the offender shall be liable to be committed to the common gaol of the county with hard labour, for any period not exceeding six months, unless the fine or penalty and the costs of enforcing the same be sooner paid.

Application of penalty.

7. The plaintiff or complainant shall be entitled to one moiety of the penalty, and the other moiety shall be paid over to the treasurer of the municipality.

Application of Act.

8. This Act shall not apply to any portion of the Province which under chapter 213 of the Revised Statutes of Ontario, 1887, may have been declared a fire district.

52 Vict. cap. 47.

An Act to amend the Act to prevent the spread of Contagious Diseases among Horses and other Domestic Animals.

Assented to 23rd March, 1889.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section 8 of *The Act to prevent the spread of Contagious Diseases among Horses and other Domestic Animals,* is amended by adding thereto the following sub-section:— Rev. Stat. c. 216, s. 8, amended.

(3) The council of any municipality may idemnify the owner of any animal killed or destroyed under the provisions of this Act for the loss sustained by such owner.

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